

2015

Breaking Forever Families

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Breaking Forever Families

ANDREA B. CARROLL*

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I. INTRODUCTION

Adoption is forever, or so pop culture tells us.¹ Long gone are the days when adoption served as a means of procuring cheap labor for working

*Professor of Law, LSU Law Center. Thanks are due to the Southeastern Association of Law Schools and the participants of its 2014 Roundtable on Family Law for their extensive commentary and criticism, and to the LSU Law Center for its continuing and generous support of my research on family formation through adoption and assisted reproduction. Kristi Obafunwa (LSU Law Class of 2014) provided excellent research assistance.

¹See, e.g., RHONDA POLLERO & TRACI HALL, ADOPTION IS FOREVER: TWO PERSPECTIVES ON THE LOVE, HEARTACHE AND HOPE OF THE JOURNEY TOWARD CHOICE, FAMILY AND FULFILLMENT (2009) (award-winning fiction author’s humorous take on open adoption).

families and children arrived at unscreened homes on the “orphan train.”² Rather, the adoption of the last half century is one that we are told is to closely mirror happily ever after. Lucky parents fulfill their dream of parenthood and children in need find a “forever family.”³

Twenty years ago the idea of disturbing a finalized adoption would have been anathema, and arguably the same could be said today.⁴ But a change in the pool of available adoptees, a sharp rise in international adoption,⁵ and the existence of the Internet are developments which, oddly enough, have collided to present heretofore unseen problems when adoptions do not go as planned and happily ever after proves elusive.

The crux of the problem is that when adoptions go wrong, desperate parents find little help, either from the adoption agencies who so zealously worked on their behalf to place the child, or from the government.⁶ No matter how dire the situation becomes, no state-sanctioned method of undoing an adoption, or of otherwise relinquishing an adopted child, currently exists.⁷ Absent involuntary termination of parental rights for abuse or neglect, the parent-child relationship is indelibly forged.⁸ And while that is the very goal of adoption, the law must recognize that not every adoptive relationship should continue. Indeed, the child’s welfare may depend on its disruption.

Over the last few decades, courts and child welfare experts alike have been understandably unwilling to fashion a voluntary mechanism by which an adoptive family could disrupt a perfected adoption and relinquish the child

² Jennifer Foulkes Coakley, *Finalized Adoption Disruption: A Family Perspective 1* (Fall 2005) (unpublished Ph.D. dissertation, University of California, Berkeley) (on file with author).

³ The Dave Thomas Foundation for Adoption, for instance, a well-known non-profit founded by Wendy’s proprietor Dave Thomas, disseminates an adoption guide entitled “Finding Forever Families: A Step-by-Step Guide to Adoption.” DAVE THOMAS FOUND. FOR ADOPTION, *FINDING FOREVER FAMILIES: A STEP-BY-STEP GUIDE TO ADOPTION*, available at <http://www.davethomasfoundation.org/about-foster-care-adoption/adoption-guide/>, archived at <https://perma.cc/YD5B-2RAW>. A cursory Internet search turns up hundreds of results dubbing adoptive families “forever families.” The phrase has thoroughly sunk into popular adoptive nomenclature.

⁴ Trudy Festinger, *Adoption Disruption: Rates and Correlates*, in *THE PSYCHOLOGY OF ADOPTION* 201, 201–02 (David M. Brodzinsky & Marshall D. Schechter eds., 1990).

⁵ See DOUGLAS E. ABRAMS ET AL., *CONTEMPORARY FAMILY LAW* 1104–05 (2d ed. 2009) (tracking international adoption statistics over the course of decades and concluding that international adoptions account for roughly fifteen percent of U.S. adoptions today).

⁶ See *infra* Part V.

⁷ Adoptive parents can petition the court to set aside an adoption decree, but they are almost always unsuccessful, given the view of adoption as a “permanent” transaction. See, e.g., Tiffany Woo, Comment, *When the Forever Family Isn’t: Why State Laws Allowing Adoptive Parents to Voluntarily Rescind an Adoption Violate the Adopted Child’s Equal Protection Rights*, 39 SW. L. REV. 569, 571–72 (2010) (chronicling rare cases in which adoptive parents have been successful in setting aside finalized adoptions).

⁸ *Id.* at 578–79.

into the existing state system.⁹ But times have changed dramatically, and the emergence of a disturbing private remedy for unsuccessful adoptions now gives us no choice but to reevaluate all options.

Part II of this Article describes the new reality of unsuccessful adoptions. In spite of the best efforts of child welfare workers, or maybe even because of them, the fact is that adoptions are sometimes simply unsuccessful, and suffer from some form of disruption. Part III describes the worst potential endings to unsuccessful adoptions, including abuse and neglect, and, as of the last few years, even private rehoming. The prevalence of those outcomes is highlighted and the harm of them explicated. Part IV explains that some biological parents who find themselves unequipped to parent and in dire situations are not as hamstrung as their adoptive parent counterparts. The emergence of safe haven legislation has provided a viable solution for their predicament. Finally, Part V argues for the creation of a state-approved and, more importantly, state-supervised method for disrupting adoptions, borrowing from the safe haven statutes which have garnered nationwide acceptance.

Scholars and child welfare authorities alike must begin to set aside their utter disdain for disruption and recognize that, sometimes, disruption is necessary and in the child's best interests. Embracing, *and controlling*, disruption is the direction in which adoption advocates must now move.

II. ADOPTION CRISIS: THE NEW REALITY?

Before the 1970s, disruption¹⁰ of adoption was almost unheard of. In fact, a series of studies covering the period leading up to 1970 consistently concluded that less than two percent of adoptions suffered such a fate.¹¹

It is difficult to quantify precise rates of adoption disruption today, largely because no records are kept by any entity, governmental or private.¹² And, far more importantly, no formal or state-run means of disrupting a finalized adoption currently exists.¹³

⁹ See, e.g., RICHARD P. BARTH & MARIANNE BERRY, ADOPTION AND DISRUPTION: RATES, RISKS, AND RESPONSES 4 (1988).

¹⁰ Discussions of adoption outcomes are nearly always complicated by the fact that there is not a settled nomenclature used consistently to describe various adoption outcomes. The phrase "failed adoption" has been retired, but its replacement with words like "disruption," which frequently refers to prelegalization relinquishments, and "dissolution," which usually refers to postlegalization relinquishments, has confused matters substantially. Still other terms, including "set-asides" are frequently used as well. This Article focuses primarily on postlegalization relinquishments of adopted children. But the word disruption is used here, as it is in the adoption industry, broadly as "a catch-all phrase . . . to indicate that any adoptive placement has ended." *Id.* at 20.

¹¹ Festinger, *supra* note 4, at 201-02.

¹² See Woo, *supra* note 7, at 570. See generally TRUDY FESTINGER, NECESSARY RISK: A STUDY OF ADOPTIONS AND DISRUPTED ADOPTIVE PLACEMENTS (1986).

¹³ See Woo, *supra* note 7, at 570.

To the extent disruption occurs, it is largely done privately; adoption agencies, on occasion, help to place a child of disruption into the arms of a ready and waiting second set of adoptive parents.¹⁴ As a result, disrupted adoptions frequently go altogether unreported, and even those situations that do come to the attention of child welfare or judicial authorities are not collected for study.¹⁵ Even the most conservative estimates suggest a disruption rate of seven percent.¹⁶ But states which have briefly attempted to track disruption rates have reported them to be as high as twenty percent and adoption caseworker speculation has long run closer to fifty percent.¹⁷

What is absolutely clear from the scant data available is that the percentage of children living outside the adoptive home after a finalized adoption has increased substantially in recent years, and has approached numbers that should be sufficient to provide a wakeup call to child welfare authorities and concerned adoption advocates alike. Adoption disruption has become nothing short of a twenty-first century crisis.

Rates of disruption aside, adoption advocates and scholars working in the area have undertaken, over the course of the last several decades, to determine *why* disruption rates seem more prevalent of late. The development seems counterintuitive, particularly in the wake of a shift from the model of adoption that found slave labor for needy families to a placement analysis focused almost exclusively on the best interest of the child to be adopted.¹⁸

Unfortunately, the precise reasons for the growth of a new disruption crisis have remained as mysterious as the precise rates of disruption. Still, disruption research has confidently identified several contributors to increased disruption rates. The increase in adoption of older children and special needs children, for instance, has undoubtedly increased the frequency of disruption.¹⁹ Groups of children that used to languish in the foster care system and be branded “unadoptable” are finding adoptive homes with far greater frequency these days, thanks to a push away from the infant adoption market and toward finding homes for the children who are arguably most in need.²⁰ That laudable effort comes at a cost though, as it is relatively well-accepted that older child

¹⁴Coakley, *supra* note 2, at 10 (finding that roughly twenty-four percent of disruptions are actually initiated by an adoption agency, rather than by an adoptive parent).

¹⁵*Id.* at 11.

¹⁶*Id.* at 4.

¹⁷Festinger, *supra* note 4, at 204 (discussing Virginia’s brief attempt at tracking disruption); FESTINGER, *supra* note 12, at 1 (quoting a contemporary report as speculating that “the disruption rate may be 50 percent. For many challenging kids, particularly teenagers, I wouldn’t be surprised if the rate were 70 percent.”).

¹⁸Coakley, *supra* note 2, at 1–2.

¹⁹See BARTH & BERRY, *supra* note 9, at 8–11.

²⁰*Id.*

and special needs adoptions are more volatile, and therefore carry with them a significantly greater risk of disruption than do infant adoptions.²¹

International adoption may have had an even more significant effect. In the last fifteen years alone, Americans have adopted hundreds of thousands of children from other nations, nearly double the number of children adopted internationally than the decade before.²² International adoption has been lauded as a positive and life-changing success for many, not the least of which are the orphaned children who have found permanent homes through the process.²³ But the boom in intercountry adoptions has also contributed to the increased prevalence of unsuccessful adoptions.²⁴ Experts assume that the vast majority of unsuccessful adoption outcomes are a result of international adoption.²⁵ Indeed, something in the neighborhood of seventy percent of disrupted adoptions are said to be intercountry adoptions.²⁶

Precisely why international adoptions seem to be less successful than their domestic counterparts is not fully known. But most of the research centers around Reactive Attachment Disorder (RAD), an attachment disorder that prevents children from establishing healthy bonds with their caregivers, typically as a result of trauma or neglect in infancy.²⁷ When a child's attachments are disordered in infancy, the brain actually changes in a way that inhibits the child's ability to establish appropriate attachments in the future.²⁸ RAD is a lifelong condition for which therapy may provide some relief, but for which there is little hope of a "cure."²⁹ RAD children actively shun the very

²¹ See, e.g., Robert M. Goerge et al., *Adoption, Disruption, and Dissolution in the Illinois Child Welfare System, 1976–94*, at 18 (The Chaplin Hall Ctr. for Children at the Univ. of Chi., Discussion Paper No. 059, 1996).

²² See ABRAMS ET AL., *supra* note 5, at 1104–05.

²³ See generally Gabriela Misca, *The "Quiet Migration": Is Intercountry Adoption a Successful Intervention in the Lives of Vulnerable Children?*, 52 FAM. CT. REV. 60 (2014).

²⁴ D. Marianne Brower Blair, *Admonitions Or Accountability?: U.S. Implementation of the Hague Adoption Convention Requirements for the Collection and Disclosure of Medical and Social History of Transnationally Adopted Children*, 40 CAP. U. L. REV. 325, 348 n.118 (2012).

²⁵ See Megan Twohey, *The Child Exchange: Inside America's Underground Market for Adopted Children, Americans Use the Internet to Abandon Children Adopted from Overseas*, REUTERS (Sept. 9, 2013) [hereinafter Twohey, *Child Exchange Part 1*], <http://www.reuters.com/investigates/adoption/#article/part1>, archived at <http://perma.cc/BH3Y-BDE7>.

²⁶ *Id.*

²⁷ Christina Rainville, *Working with Children Who Have Reactive Attachment Disorder*, 32 ABA CHILD L. PRAC., no. 2, Feb. 2013, at 17, 17.

²⁸ *Id.*

²⁹ See *Reactive Detachment Disorder*, MAYO CLINIC (July 10, 2014), <http://www.mayoclinic.org/diseases-conditions/reactive-attachment-disorder/basics/definition/CON-20032126>, archived at <http://perma.cc/UT23-4N9W>.

attachments that make adoption work, and therefore are much more likely to suffer a disrupted placement than are their non-RAD counterparts.³⁰

Of course, both international and domestic adoptees alike may suffer from RAD, but its existence is most frequently documented in children who lack any semblance of an emotional bond with *any* person, whether it be a parent or even a relatively infrequent caregiver, during infancy.³¹ Newborn domestic adoptees typically bond with their adoptive parents, who are often a presence in their lives very shortly after birth.³² And even children adopted after spending time in the American foster care system generally form appropriate attachments to *someone*, be it a biological parent or foster parent. They are typically able to then transfer those attachments to a new parent in appropriate situations.³³ International adoptees, in contrast, and particularly those reared in an orphanage system (rather than a foster home) rarely have any opportunity to form equivalent attachments.³⁴ The horrors of Russian and Chinese orphanages are well-known, and international audiences have watched as child welfare workers document the thousands of infants in these countries who spend their entire lives in a crib with absolutely no mental or physical stimulation, frequently touched only once a day for changing or feeding.³⁵ Attachment disorder is almost the rule in international adoption.³⁶ And while prospective adoptive parents are well-warned of the risk, there is no doubt that RAD, whether parents are prepared for it or not, ultimately leads to the downfall of many international adoptions.³⁷

Finally, some point to the speed with which children are being moved through the adoption system (both domestic and international) these days as a major contributor to the increased likelihood of adoption disruption.³⁸ The cost of the child welfare system's push toward finding adoptive homes for older and special needs children, in particular, has resulted in a softening of the historically rigorous standards for adoptive parents.³⁹ Adoptive parents are older and less wealthy than they used to be, and attempts at "matching"

³⁰ Stacy S. Drury et al., *From Biology to Behavior to the Law: Policy Implications of the Neurobiology of Early Adverse Experiences*, 10 WHITTIER J. CHILD & FAM. ADVOC. 25, 39–41 (2010).

³¹ See Rainville, *supra* note 27, at 17.

³² Scott A. Resnick, *Seeking the Wisdom of Solomon: Defining the Rights of Unwed Fathers in Newborn Adoptions*, 20 SETON HALL LEGIS. J. 363, 427–28 (1996).

³³ Drury et al., *supra* note 30, at 40–41.

³⁴ See Donovan M. Steltzner, *Intercountry Adoption: Toward a Regime that Recognizes the "Best Interests" of Adoptive Parents*, 35 CASE W. RES. J. INT'L L. 113, 130–31 (2003).

³⁵ See *id.*; see also Gabriela Marquez, Comment, *Transnational Adoption: The Creation and Ill Effects of an International Black Market Baby Trade*, 21 J. JUV. L. 25, 29 (2000).

³⁶ See Steltzner, *supra* note 34, at 130–31.

³⁷ Drury et al., *supra* note 30, at 39–41.

³⁸ Coakley, *supra* note 2, at 4.

³⁹ BARTH & BERRY, *supra* note 9, at 8–11.

adoptive parents with children in terms of physical characteristics, religion, or even family compatibility have all but halted in this “quicker is better” world.⁴⁰ In short, both “[p]ractitioners and policymakers are concerned that the effects of the more vigorous and less encumbered pursuit of adoptive placements may have decreased [the] stability” of adoptions.⁴¹

Whatever the reasons, a crisis point has emerged in adoption in this country. And while no one wishes to acknowledge it, least of all child welfare experts,⁴² the sheer volume of unsuccessful adoptions cries out for an evaluation of the current system and highlights the need for new solutions for adoptive families in crisis.

III. THE DARK UNDERBELLY OF UNSUCCESSFUL ADOPTION

Most adoption advocates consider disruption of a finalized adoption to be the worst possible horror that could befall a child. Disruption is “an affront to social workers.”⁴³ It shakes the very “faith and foundation of child welfare service providers.”⁴⁴ But as the last decade has demonstrated, far worse fates than disruption befall adopted children when their placements are unsuccessful.

A. Abuse, Neglect, and Even Homicide

Some adoptive children have paid the ultimate price for unsuccessful placements. Sadly, stories of abuse and neglect perpetrated at the hands of adoptive parents abound, and murder cases in the adoption context have become so frequent that they seem almost a staple of the nightly news.

Unsuccessful intercountry adoptions have garnered most of the attention. In the case of Peggy Hilt, for instance, the well-known adoptive mother of a Russian two-year-old, Nina, nearly two years of heartbreak and dismay finally erupted one tragic day when Peggy choked and beat Nina to death as they were packing for a family vacation.⁴⁵ Peggy Hilt had been frustrated and at her wits' end for months; she says she “snapped” when her daughter reached into

⁴⁰ *Id.* at 11–22.

⁴¹ *Id.* at 20.

⁴² One scholar remarked that “if a list were made of issues that most disturb adoption workers, adoption ‘failure’ (or disruption) would be close to the top.” FESTINGER, *supra* note 12, at 1 (citation omitted).

⁴³ BARTH & BERRY, *supra* note 9, at 4.

⁴⁴ *Id.*

⁴⁵ See Theresa Vargas, *Mother Sentenced to 25 Years*, WASH. POST (May 26, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/25.html>, archived at <http://perma.cc/988N-5CAL>; Pat Wingert, *When Adoption Goes Wrong*, NEWSWEEK (Dec. 8, 2007, 10:16 AM), <http://www.newsweek.com/when-adoption-goes-wrong-94777>, archived at <http://perma.cc/4MRL-5H49>.

her diaper and smeared feces from it on the walls of the family home.⁴⁶ Peggy and her husband had apparently successfully parented another (Ukrainian) adoptee for years before Nina's adoption.⁴⁷ But Nina's placement, and Peggy's desperation when it did not pan out as expected, sent Peggy into chaos, and ultimately, Peggy's act of murder doomed the entire family to an awful fate.

More recently, in late 2013, a Washington couple was convicted of manslaughter for the death of Hana Williams, a thirteen-year-old girl they adopted from Ethiopia.⁴⁸ Hana was starved, beaten, and left outside in sub-freezing temperatures as punishment for her alleged misdeeds.⁴⁹ Two of the Williams's six biological children were even sent by Hana's parents to beat her on occasion.⁵⁰ After a day of grueling punishment, Hana died of hypothermia and malnutrition.⁵¹

Outcomes like those in the Hilt and Williams cases have become so prevalent that a number of countries with whom the United States has most frequently partnered to effectuate international adoptions have shut down adoptive placements to Americans.⁵² The result of these child murder cases, then, has been nothing short of destabilization of the entire institution of intercountry adoption.

But unfortunately, the problem is not one unique to international adoption. Similar fates have befallen the children of unsuccessful domestic adoptions. Texas charged Dallas adoptive dad Scott Garrett with capital murder after he allegedly beat one of his adopted twin toddlers to death.⁵³ Garrett reported that he had been "rough-housing, tickling and playing 'Superman'" with his child "and that he must have done something" accidental that resulted in the child's death.⁵⁴ But at least one witness reported that something always seemed to happen to the toddler boy when his adoptive mother was out of town.⁵⁵ The

⁴⁶ Vargas, *supra* note 45; Wingert, *supra* note 45.

⁴⁷ Theresa Vargas, *Mother Admits Killing Daughter*, WASH. POST (Mar. 2, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/01/.html>, archived at <http://perma.cc/DH5T-RTY4>.

⁴⁸ Kathryn Joyce, *Hana's Story: An Adoptee's Tragic Fate, and How It Could Happen Again*, SLATE (Nov. 9, 2013, 11:30 PM), http://www.slate.com/articles/double_x/doublex/2013/11/hana_williams_the_tragic_death_of_an_ethiopian_adoptee_and_how_it_could.html, archived at <http://perma.cc/HK6Z-5M9E>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Vargas, *supra* note 45; Wingert, *supra* note 45.

⁵³ Valerie Wigglesworth, *Dallas-Area Adoption Ends with One Toddler Dead, Twin in Foster Care, Dad Charged with Capital Murder*, DALLAS MORNING NEWS (Jan. 8, 2012, 11:20 PM), <http://www.dallasnews.com/news/crime/headlines/20120108-dallas-area-adoption-ends-with-one-toddler-dead-twin-in-foster-care-dad-charged-with-capital-murder>.
ece, archived at <http://perma.cc/FV8W-FCQ6>.

⁵⁴ *Id.*

⁵⁵ *Id.*

child Garrett allegedly abused, and ultimately murdered, was adopted at roughly a year old in a private adoption.⁵⁶ Stories of abuse and neglect coming out of the foster care system are even more prevalent.

In adoptions of all kinds, then, the last decade has proved the existence of an uglier monster than disruption. Suffering through a disruption is undoubtedly exceptionally harmful for an already-fragile adopted child. But it is a harm far preferable to that suffered by the Hilt, Williams, and Garrett children.

B. *Private Rehoming*

Of course, not all unsuccessful adoptions end with abuse, or worse. Desperate adoptive parents who can keep their wits about them in the midst of crisis have appropriately sought other ways out of spiraling, dangerous situations, whether in the wake of a domestic or international adoption. Historically, they had virtually no place to turn. A few private facilities around the country boasted relatively strong success rates in taking in and rehabilitating troubled adoptees, perhaps to be reunited with their adoptive families down the road, or perhaps to find a place for those adoptees to remain until they became majors.⁵⁷ But those facilities are few and far between. Adoptive families that can afford to pay the staggering costs of such a placement represent a tiny minority of the adoptive population.⁵⁸ And even when financial arrangements are feasible, wait lists stretch to years—time that families in crisis simply do not have.⁵⁹ New solutions have long been needed, and absent a governmental intervention, the adoption community began to create its own solution, albeit informally, online.

⁵⁶ *Id.*

⁵⁷ The most well-known is a ranch in Montana called Ranch for Kids. Bonnie Miller Rubin, *The Final Stop for Disruptive Adoptees*, L.A. TIMES (Jan. 20, 2008), <http://articles.latimes.com/2008/jan/20/nation/na-adopt20>, archived at <http://perma.cc/3LK7-9HUY>. The ranch has even drawn the ire of the Russian government as a place that has taken in many children of disruption from Russia. See also Myers Reece, *Russian Government Faces Off with Eureka Adoption Ranch*, FLATHEAD BEACON (Aug. 1, 2012), <http://flatheadbeacon.com/2012/08/01/russian-government-faces-off-with-eureka-adoption-ranch/>, archived at <http://perma.cc/N6UR-SVTZ> (ranch described by one Russian official as a “trash can for unwanted children”).

⁵⁸ The cost of care at Ranch for Kids, for instance, hovers around \$3,000 per month. Rubin, *supra* note 57.

⁵⁹ JuJu Chang et al., *From Russia with Love—Dealing with Difficult Adoptions*, ABC NEWS (Nov. 28, 2008), <http://abcnews.go.com/2020/story?id=6322100&singlePage=true>, archived at <http://perma.cc/RP27-UAR7>.

1. “Hey, Can I Have Your Baby?”⁶⁰

By 2013, the practice of informal “trading” of adopted children on the Internet had become relatively prevalent.⁶¹ Families interested in relinquishing adopted children flocked to bulletin boards and other online sources in search of help.⁶² Groups of parents sharing similar struggles began to be formed on Yahoo! and Facebook, and a well-entrenched online community began to take shape.⁶³ One Facebook group—Way Stations of Love—boasted nearly three hundred members, all communicating to find solutions to unsuccessful adoptions.⁶⁴ The bulletin boards contained “dozens of advertisements for children that appear to be posted by middlemen.”⁶⁵ Concerned parents, typically those who had struggled with their own adoptions, sought to introduce parents seeking homes for unwanted children with others who might be willing to take them in. The practice grew to be called “private rehoming,” and through it, an unascertainable number of adopted children found new families.⁶⁶

The existence of an underground rehoming network brought hope to adoptive families, typically at their wits’ end with children they could not handle. And the informal process facilitated by the Internet “emerged as a do-it-yourself way for parents to quietly end adoptions. The groups not only attract parents, but also appeal to do-gooders . . . who delight in the chance to help find needy children better homes.”⁶⁷ With governments and adoption agencies unwilling to acknowledge the realities of unsuccessful adoptions, or at least unwilling to help the families suffering in them, this “hey, can I have your baby?” approach seemed to cast a ray of light for all parties involved. Rehoming networks supported distressed parents, found permanent families for children, and represented an imperfect—but at least partial—solution for families in crisis.

The rehoming community grew relatively vast. The need for online rehoming networks has been described as a “reflection of society.”⁶⁸ Indeed, the networks seemed to expose the steadfastly ignored reality that many adoptions do not have a happy ending. “Reuters analyzed 5,029 posts from a

⁶⁰ Twohey, *Child Exchange* Part 1, *supra* note 25 (image caption).

⁶¹ *See id.*

⁶² Megan Twohey, *The Child Exchange: Inside America’s Underground Market for Adopted Children, With Blind Trust and Good Intentions, Amateurs Broker Children Online*, REUTERS (Sept. 10, 2013) [hereinafter Twohey, *Child Exchange* Part 3], <http://www.reuters.com/investigates/adoption/#article/part3>, archived at <http://perma.cc/D3DP-GLG4>.

⁶³ Twohey, *Child Exchange* Part 1, *supra* note 25.

⁶⁴ Twohey, *Child Exchange* Part 3, *supra* note 62.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

five-year period on one Internet message board, a Yahoo! group. On average, a child was advertised for rehoming there once a week.”⁶⁹ With dozens more rehoming networks populating the Internet,⁷⁰ one can only guess how many children were rehomed through these private and wholly informal communities.

2. “Grave Danger” Finally Exposed⁷¹

Because private rehoming remains just that—*private*—little scrutiny and no oversight had been directed towards rehoming networks.⁷² There are few legal safeguards against rehoming, and those that may exist are typically not enforced.⁷³ State law requires a comprehensive and invasive process to be followed when families adopt a child.⁷⁴ But quick, informal, and private custody transfers with no judicial oversight whatsoever are frequently permissible in the law, for many good reasons unrelated to unsuccessful adoptions.⁷⁵ Moreover, a large minority of American states have yet to prohibit the advertisement of children for adoption, leaving rehoming forums essentially unchecked by the law.⁷⁶

The first official suggestion that any law may actually prohibit the practice of private rehoming came in 2011, when an administrator for the Interstate Compact on the Placement of Children (ICPC) sent a letter of warning to other administrators in ICPC jurisdictions.⁷⁷ That letter, prompted by reports of a child welfare worker in one state indicating that children were being sent to new parents without the approval of authorities,⁷⁸ sought to raise awareness of the potential of an ICPC violation in rehoming situations.⁷⁹ Now binding on

⁶⁹ Twohey, *Child Exchange* Part 1, *supra* note 25.

⁷⁰ *Id.*

⁷¹ Megan Twohey, *The Child Exchange: Inside America’s Underground Market for Adopted Children, Despite “Grave Danger,” Government Allows Internet Forums to Go Unchecked*, REUTERS (Sept. 10, 2013) [hereinafter Twohey, *Child Exchange* Part 4], <http://www.reuters.com/investigates/adoption/#article/part4>, archived at <http://perma.cc/BH3Y-BDE7>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Aimee Bouchard & Kim Zadworny, *Growing Old Together: Estate Planning Concerns for the Aging Same-Sex Couple*, 30 W. NEW ENG. L. REV. 713, 740 (2008).

⁷⁵ J. Michael Norwood & Alan Paterson, *Problem-Solving in a Multidisciplinary Environment? Must Ethics Get in the Way of Holistic Services?*, 9 CLINICAL L. REV. 337, 369 (2002) (describing custodial transfers by mere power of attorney).

⁷⁶ Sascha Cordner, *Could Florida Become 30th State to Regulate How Kids Are Advertised for Adoption?*, WFSU (Dec. 10, 2013, 6:17 PM), <http://news.wfsu.org/post/could-florida-become-30th-state-regulate-how-kids-are-advertised-adoption>, archived at <http://perma.cc/27JP-2QTA> (describing Florida’s attempt to become the thirtieth state to regulate the advertisement of children for adoption).

⁷⁷ Twohey, *Child Exchange* Part 1, *supra* note 25.

⁷⁸ *Id.*

⁷⁹ *Id.*

all fifty states, D.C., and the Virgin Islands, the ICPC requires that the parents of an adopted child who is to be transferred to a new and permanent home in a different state contact child welfare authorities in both states to alert them to the transfer.⁸⁰ At that point, background checks, home studies, and other investigations are triggered to evaluate the propriety of the child's placement.⁸¹ The 2011 letter warned that Internet rehoming networks flaunt the ICPC because they operate "without the involvement of a licensed adoption agency, or any other type of agency authorized to place children."⁸² The official went on to note that private rehoming "puts children at substantial risk, primarily because the families to which they are sent have not been subject to background checks, a home study or any evaluation to assess their suitability to care for children."⁸³ The warnings fell on deaf ears, and rehoming has steadily plodded along, largely hidden from public view.

In late 2013, however, news of a rehoming case broke that brought with it a firestorm of scrutiny and dismay over the practice.⁸⁴ Nicole Eason and her husband Calvin, a pair of thirty-somethings living in Illinois, responded to an ad posted on a Yahoo! chat group by Todd and Melissa Puchalla, a Wisconsin family that was struggling with sixteen-year-old Quita, a child they had adopted from Liberia.⁸⁵ The Puchallas report that Quita was "unpredictable and violent" and had threatened her siblings such that the family was in severe crisis.⁸⁶ Exhausted and terrified, the family looked to private rehoming and eventually concluded "[t]here was no other option."⁸⁷ Within just days, the Puchallas found the Easons, who seemed, at first, like a dream come true.⁸⁸ The Easons assured Melissa Puchalla that they could handle Quita, even with severe health and behavioral problems, and even seemed excited about the opportunity.⁸⁹ The Puchallas hoped that the Easons' mixed-race family might make Quita feel more at ease.⁹⁰ In the series of emails that followed, Nicole Eason convinced the Puchallas that the Easons were fantastic with children and could handle the challenges of parenting Quita.⁹¹ Just a few weeks later, the Puchallas made the six-hour drive from Illinois to Wisconsin, met the Easons, and turned Quita over to them that very day, without the presence or knowledge of a single child welfare official.⁹² "The Puchallas simply signed a

⁸⁰ *Id.*

⁸¹ *See id.*

⁸² *Id.* at image of 2011 ICPC letter, archived at <http://perma.cc/QU4M-5RE5> (accessed by clicking on the words "the official wrote" within the text of the article).

⁸³ Twohey, *Child Exchange* Part 1, *supra* note 25, at image of 2011 ICPC letter.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Twohey, *Child Exchange* Part 1, *supra* note 25.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

notarized statement declaring these virtual strangers to be Quita's guardians. The visit lasted just a few hours. It was the first and last time the couples would meet."⁹³

Less than a week later, the Easons disappeared with Quita.⁹⁴ They abandoned the disheveled trailer in which they were living, packed much of what they owned, and left Illinois.⁹⁵ Nicole Eason suddenly stopped answering Melissa Puchalla's calls and emails.⁹⁶ When Melissa Puchalla finally alerted authorities, a search for Quita began.⁹⁷

That search process uncovered a shocking wealth of information about just who the Easons were.⁹⁸ With Quita still missing, authorities learned that the Easons had taken in several other children through the underground rehoming network over the course of several years.⁹⁹

Just months before the Puchallas turned over Quita, the Easons had taken in thirteen-year-old Anna Barnes, a Russian adoptee living with her adoptive parents in Texas.¹⁰⁰ Like the Puchallas, the Barnes family, desperate and unable to cope with Anna's behavioral problems, turned Anna over to Nicole Eason after communicating with her on a Yahoo! chat board named "Respite-Rehoming."¹⁰¹ Anna later reported that "puddles of urine and piles of feces spotted the floor" of the Eason home on the day she arrived, that pornographic videos were placed within her reach, and that "she had no bed of her own."¹⁰² "The first night, she slept next to a naked Nicole, she recalls. The next morning, she says, Nicole asked Anna if she had felt Nicole kissing her during the night."¹⁰³ And from there, matters just got worse. The Barneses learned of problems in the Easons' past, and discovered that a home study the Easons had presented to show that they had been appropriately vetted and approved by child welfare authorities was a forgery.¹⁰⁴ Two days after the Barneses relinquished Anna, they reclaimed her.¹⁰⁵

As it turns out, Anna was one of the lucky ones. Several years before Quita and Anna, Nicole Eason and a man with whom she was living—Randy Winslow—took in a ten-year-old boy, again through private rehoming.¹⁰⁶ The

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Twohey, *Child Exchange* Part 1, *supra* note 25.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *See id.*

¹⁰⁰ Twohey, *Child Exchange* Part 4, *supra* note 71.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Megan Twohey, *The Child Exchange: Inside America's Underground Market for Adopted Children, In a Shadowy Online Network, a Pedophile Takes Home a "Fun Boy,"* REUTERS (Sept. 9, 2013) [hereinafter Twohey, *Child Exchange* Part 2],

boy's adoptive mother turned him over after communicating with Eason on "ConsideringDisruptionAdoption, a Yahoo! group for parents struggling to raise the children they adopted."¹⁰⁷ The boy's mother, who had adopted him out of the U.S. foster care system, could no longer handle the child's tantrums and "wanted [him] gone."¹⁰⁸ The very day she first communicated with Eason, the child's mother handed him over to Eason and Winslow.¹⁰⁹ She "knew little about the couple," and that would prove to be a tragic mistake.¹¹⁰ The boy eventually returned home to his adoptive mother, and reported spending nearly all of his time with Winslow, not Eason.¹¹¹ Just two years later, Winslow was convicted of multiple counts of sending and receiving child pornography.¹¹² An investigator with the Department of Homeland Security communicated with Winslow in a chat room, where Winslow reported having molested multiple children "in the family" without remorse.¹¹³ Transcripts of that criminal chat show that Winslow referred to the ten-year-old he and Nicole took in as a "fun boy."¹¹⁴ Winslow is now serving a sentence in federal prison for child pornography.¹¹⁵

At least two other children the Easons took in through private rehoming had experiences similar to those reported by Anna Barnes.¹¹⁶ And authorities learned during the search for Quita that Nicole Eason's biological daughter was removed from her home for abuse and neglect, and that a child she had once been babysitting died in her care.¹¹⁷

Authorities finally caught up with the Easons in New York, Quita was with them.¹¹⁸ When she reported pornography in the house and having been forced to sleep with a naked Nicole—stories eerily similar to those Anna Barnes reported as well—Quita was sent back to the Puchallas.¹¹⁹

Sadly, "taking Quita from the Easons and returning her to the Puchallas was the extent of the response by authorities."¹²⁰ New York police did not believe that the Easons had committed any crimes in that state.¹²¹ And neither

<http://www.reuters.com/investigates/adoption/#article/part2>, archived at <http://perma.cc/BH3Y-BDE7>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Twohey, *Child Exchange* Part 2, *supra* note 106.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ See Twohey, *Child Exchange* Part 4, *supra* note 71.

¹¹⁷ Twohey, *Child Exchange* Part 2, *supra* note 106.

¹¹⁸ Twohey, *Child Exchange* Part 1, *supra* note 25.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

Illinois nor Wisconsin officials took any action either.¹²² Indeed, the Easons have *never* been charged with nor convicted of any crime relating to their rehoming or child-rearing activities.¹²³ They are said to be in Arizona now, and less than a year ago, the Easons reported having kids they had taken in yet again.¹²⁴

Child welfare authorities have done nothing to stop the Easons, nor have law enforcement officials, most likely because (aside from, perhaps, the forged home study) it is questionable whether the Easons have violated any law.¹²⁵ Indeed, the law has heretofore completely ignored the rehoming phenomenon, preferring not to acknowledge it, and staunchly sticking to the maintenance of the fantasy that adoptions must always be successful.

All that changed with the September 2013 Reuters series *The Child Exchange: Inside America's Underground Market for Adopted Children*.¹²⁶ The Reuters series profiled the Easons, painstakingly tracked posts on online rehoming networks, and brought hundreds of thousands of eyes to a problem previously ignored.¹²⁷ That series will prove a game-changer in a number of ways. It has already become evident that *The Child Exchange* served as a call to arms to several legislatures to do something to address private rehoming and its dangers. But it is hoped that *The Child Exchange* will do more—namely that it will impart a realization to those concerned with adoption and child welfare that the current system is completely inadequate in dealing with the reality of failed adoptions. Rehoming, flawed as it may be, addresses a problem that can no longer be ignored.

3. Rehoming Prohibition Initiatives

In the wake of the Reuters report bringing new light to the horrors of the underground rehoming network, both federal and state lawmakers have called for sweeping change.¹²⁸ At the federal level, Senator Ron Wyden of Oregon wrote to Attorney General Eric Holder and others requesting that federal resources be deployed to curb the practice of private rehoming.¹²⁹ Wyden

¹²² *Id.*

¹²³ *Id.*

¹²⁴ See Twohey, *Child Exchange* Part 4, *supra* note 71.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ See, e.g., Megan Twohey, *Lawmakers Demand Stop to Parents Giving Away Adopted Kids on Internet*, NBC NEWS (Oct. 29, 2013), <http://www.nbcnews.com/news/other/lawmakers-demand-stop-parents-giving-away-adopted-kids-internet-f8C11492450>, archived at <http://perma.cc/739H-UGCX>.

¹²⁹ Letter from Ron Wyden, U.S. Sen., to Eric Holder, U.S. Att'y Gen., John Kerry, U.S. Sec'y of State, Rand Beers, Acting U.S. Sec'y of Homeland Sec., and Kathleen Sebelius, U.S. Sec'y of Health & Human Servs. (Oct. 29, 2013), available at http://msnbcmedia.msn.com/i/msnbc/sections/news/Wyden_Agencies_Rehoming_Letter.pdf, archived at <http://perma.cc/ARA2-4YS4>.

asked that the Department of Justice be tasked with reviewing federal law to determine “whether existing protections [against rehoming adopted children] are inadequate or unenforced.”¹³⁰ Presumably referring to the notion that the ICPC should curb, or at least place substantial limitations on, parents’ ability to rehome adopted children without government intervention but simply is not enforced, the letter requests that the Department of Health and Human Services “make recommendations to Congress about ways to strengthen enforcement of [the] law[], including a minimum federal standard for enforcement.”¹³¹

In a separate letter to the Chairman and Ranking Member of the House Ways and Means Subcommittee on Human Resources, eighteen congressional leaders asked that Congress schedule public hearings for discussion by “experts and state authorities [of] ways to prevent . . . dangerous [rehoming] practices.”¹³² This letter even asks for a government-led investigation into rehoming to be conducted by the Government Accountability Office.¹³³ The hope is that such an investigation will “review gaps in legal authority, both at the national and state levels, related to the oversight and prosecution of wrongdoers in the rehoming of children.”¹³⁴ No federal response has coalesced yet, but widespread support for a federal initiative seems likely to gain significant traction in the upcoming years.

At the state level, several jurisdictions reacted swiftly to the exposed horrors of rehoming. Wisconsin and Florida legislators, for instance, introduced bills to regulate the practice in the 2014 legislative session.¹³⁵

The Wisconsin bill sought to address rehoming by broadening prohibitions on the advertisement of children.¹³⁶ Wisconsin law historically prohibited persons from advertising Wisconsin children for adoption in newspaper, radio, or television media.¹³⁷ The Wisconsin rehoming bill sought to broaden the prohibition to include Internet, e-mail, or any other similar media, and would also broaden the prohibition to preclude advertisement of children for *permanent placement*.¹³⁸ The bill went on to shore up mechanisms for judicial

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Letter From Eighteen Members of Congress to Dave Reichert, Chairman, H. Ways & Means Subcomm. on Human Res. and Lloyd Doggett, Ranking Member, H. Ways & Means Subcomm. on Human Res. (Oct. 29, 2013), *available at* http://msnbcmedia.msn.com/i/msnbc/sections/news/Re-Homing_Letter_To_WAM.pdf, *archived at* <http://perma.cc/23NL-J2PL>.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Assemb. B. 581, 2013–2014 Leg., Reg. Sess. (Wis. 2013); S.B. 498, 2014 Leg., Reg. Sess. (Fla. 2014).

¹³⁶ Assemb. B. 581, 2013–2014 Leg., Reg. Sess. (Wis. 2013).

¹³⁷ *Id.*

¹³⁸ *Id.*

oversight of previously unregulated temporary changes of custody that occur solely through the execution of a power of attorney.¹³⁹

Perhaps most importantly, the Wisconsin bill sought to recognize that shutting down the private rehoming network may eliminate some of the abuses rehomed adoptees have been subjected to, including those detailed in the Reuters exposé, but that the bill will do *nothing* to help struggling adoptive families.¹⁴⁰ Indeed, the shuttering of the rehoming network places desperate adoptive families in even greater jeopardy through the loss of at least one potential source of relief.¹⁴¹ For that reason, the bill requested that Wisconsin's Joint Legislative Council "study [the extent of] adoption disruption and dissolution" in Wisconsin, to suggest legislation that would define, track, and avoid it, and to "consider legislative options to prepare prospective adoptive parents for adoption and to support adoptive parents after an adoption."¹⁴²

Florida's bill failed to take such a long-term approach. The drafter of the bill publicly proclaimed the intent of her Florida Senate Bill 498 to be a crackdown on rehoming in the wake of the Reuters article.¹⁴³ The bill attempted to accomplish an end to rehoming solely by beefing up criminal fines for parties who advertise children for adoption, and by informing families at the time of finalization that "[p]ostadoption services are available if the petitioner experiences difficulty in caring for the child."¹⁴⁴

Both bills passed, as did rehoming legislation in Colorado and Louisiana.¹⁴⁵ Other states are quite likely to follow suit. The National Conference of State Legislatures has published documents addressing rehoming.¹⁴⁶ And Illinois lawmakers have publicly questioned how their state could have allowed the Easons to operate as they did.¹⁴⁷

In short, both state and federal responses to the Reuters investigation are forthcoming. And it seems clear that all eyes are focused on shutting down private rehoming as a means for adoptive families to respond to unsuccessful adoptions.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Assemb. B. 581, 2013–2014 Leg., Reg. Sess. (Wis. 2013).

¹⁴³ Gina Jordan, *Florida Senate Panel Wants to Stop "Rehoming" of Children*, WLRN MIAMI (Dec. 17, 2013, 2:30 PM), <http://wlrn.org/post/florida-senate-panel-wants-stop-rehoming-children>, archived at <http://perma.cc/823D-SDL8>.

¹⁴⁴ S.B. 498, 2014 Leg., Reg. Sess. (Fla. 2014).

¹⁴⁵ CTR. FOR ADOPTION POLICY, SYNOPSIS OF STATE LAWS REGARDING THE PRACTICE OF PRIVATE RE-HOMING 1–2 (2014), available at <http://www.adoptionpolicy.org/pdf>, archived at <http://perma.cc/2HGY-758Q>.

¹⁴⁶ *Welcome to the 2012–2014 Child Welfare Enacted Legislation Database*, NAT'L CONF. ST. LEGIS. (Dec. 2014), <http://www.ncsl.org/research/human-services/2012-child-welfare-enacted-legislation-database.aspx>, archived at <http://perma.cc/7UYG-BUU2>.

¹⁴⁷ Twohey, *supra* note 128.

In this brave new world of crisis in adoption, where rehoming becomes a non-option, and where no other means of disrupting an adoption exist, we will leave adoptive parents with virtually no tools for remedying untenable situations. It should be of grave concern to policymakers that the very child abuse they zealously try to protect against may actually *increase* when adoptive parents find themselves struggling in unsuccessful adoptions with little practical means of digging themselves out.

IV. PROTECTION FOR BIOLOGICAL PARENTS IN CRISIS

Biological parents in crisis, surprisingly, are not left out in the cold to the same degree. A form of “disruption”—namely abandonment—it turns out, *is* available to them.

The crisis of unsuccessful adoption may be relatively new. But unwanted biological children have been mistreated and discarded as trash since the dawn of time. Indeed, in Roman times, abandonment was the presumptive fate of all newborns.¹⁴⁸ When a child was born, the midwife placed the baby on the ground.¹⁴⁹ Only if the *paterfamilias* picked the baby up would the child be considered part of the family.¹⁵⁰ Many infants were not picked up.¹⁵¹ And even when they were, the *paterfamilias* had the legal authority to disown his children, sell them into slavery, or even murder them with impunity.¹⁵² Abandonment was a relatively common fate for children, and abandoned children were frequently gathered up and taken as slaves by other families.¹⁵³

Modern times have done little to improve the fortunes of those born to desperate and unprepared parents. Nearly 20,000 infants are abandoned in the United States each year and many of those children are found dead.¹⁵⁴ The abandonment problem seems to have even grown worse, not better, over the course of the last several decades.¹⁵⁵ In a media-saturated environment, the increased publicity of some particularly horrific stories has drawn awareness to the problem, and even spurred society to action.

¹⁴⁸ *The Roman Empire in the First Century: Family Life*, PBS, <http://www.pbs.org/empires/romans/empire/family.html> (last visited Jan. 8, 2015), archived at <http://perma.cc/AZ8N-H87H>.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Susan L. Pollet, *Safe Haven Laws—Do Legal Havens to Abandon Babies Save Lives?*, 32 WESTCHESTER B. J. 71, 71 (2005).

¹⁵⁵ See, e.g., Nina Bernstein, *Few Choose Legal Havens to Abandon Babies*, N.Y. TIMES (Aug. 31, 2001), <http://www.nytimes.com/2001/08/31/us/few-choose-legal-havens-to-abandon-babies.html>, archived at <http://perma.cc/2HJV-FR2G>.

A. *The Birth of Safe Havens*

In 1997, a New Jersey teenager, later dubbed “the Prom Mom” by national media outlets, gave birth to a healthy baby boy in a bathroom stall at her senior prom.¹⁵⁶ She cut the umbilical cord using the serrated edge of a sanitary napkin container she dislodged from the wall, choked the baby and suffocated him, and then discarded him in a plastic trash bag.¹⁵⁷ The Prom Mom then returned to her party, ate a salad, and hit the dance floor with her boyfriend.¹⁵⁸ A custodian later found the baby in the bathroom trash.¹⁵⁹ The Prom Mom served a mere three-year sentence in prison, but sparked a national outrage.¹⁶⁰

Unfortunately, the Prom Mom wasn’t the only newborn murder debacle to resonate with national media outlets. In 1998, an Alabama mother and grandmother were convicted of drowning an hour-old infant in a toilet.¹⁶¹ Each was sentenced to a twenty-five-year prison term.¹⁶²

Together, these cases, though tragic, helped to spawn widespread acceptance of safe haven laws. But the initiation of the safe haven idea actually came through a community initiative and not a law at all.¹⁶³ The prosecutor in the Alabama infant murder case was asked by a reporter whether he would have chosen to prosecute the defendants had the infant been left in a safe place, including, for instance, a hospital.¹⁶⁴ The prosecutor believed the reporter’s idea was a good one, so he agreed to organize a meeting with Alabama health and hospital staff.¹⁶⁵ Together the group developed the “Secret Safe Place for Newborns” initiative in late 1998.¹⁶⁶

¹⁵⁶ Robert Hanley, *New Jersey Charges Woman, 18, with Killing Baby Born at Prom*, N.Y. TIMES (June 25, 1997), <http://www.nytimes.com/1997/06/25/nyregion/new-jersey-charges-woman-18-with-killing-baby-born-at-prom.html>, archived at <http://perma.cc/LR4N-4VFW>.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Paulo Lima, *Prom Night Baby-Killer to Be Freed from Prison; Completed 37 Months of 15-Year Term*, RECORD (Nov. 24, 2001), <http://www.highbeam.com/doc/1P1-48449924.html>, archived at <http://perma.cc/XKX9-EHMD>.

¹⁶¹ *Safe Abandonment Laws Needed in Canada: U.S. District Attorney*, CBC NEWS (Feb. 7, 2007, 7:52 AM), <http://www.cbc.ca/news/canada/saskatchewan/safe-abandonment-laws-needed-in-canada-u-s-district-attorney-1.671260>, archived at <http://perma.cc/NC3U-NNQN>.

¹⁶² *Id.*

¹⁶³ Paul Stenzel, *Safe Haven Laws and the Indian Child Welfare Act: Conflicting Laws and Policy Goals Leave Indian Children at Risk*, 29 CHILD. LEGAL RTS. J. 1, 1–2 (2009).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

Less than a year later, Texas picked up the torch in the form of legislation.¹⁶⁷ Spurred on by the discovery of thirteen abandoned babies in the Houston area over the course of just ten months, the state became the first to sanction—and in fact legally favor—infant abandonment that had previously been criminalized and abhorred.¹⁶⁸ The “Baby Moses” law, drawn from the ancient story of baby Moses who was placed in a wicker basket by his mother, allowed Texas mothers to relinquish custody of a child younger than sixty days old and in good health by leaving the child with a “designated infant care provider,” such as a fire station or hospital.¹⁶⁹ The law renders the abandoning mother immune from prosecution for child abandonment and assures the relinquishing parents’ confidentiality.¹⁷⁰

Other states quickly copied Texas’s work, and within just months, Louisiana and Alabama followed suit.¹⁷¹ Generally referred to as “safe haven” laws in other states, these legislative initiatives turned out to be wildly popular.¹⁷² “Conservatives liked the fact that the laws promised to save babies without spending money; liberals liked the idea that they were not punitive. Anti-abortion groups promoted them in their fight against abortion, and some Planned Parenthood affiliates latched on to promote contraception.”¹⁷³

Less than a decade later, Nebraska became the final, and fiftieth, state to pass a safe haven statute, memorializing a “consensus not often seen in politics.”¹⁷⁴ And while safe haven laws are not universally acclaimed, they are generally tolerated as a measure that, while not ideal, may help children and even save lives.

¹⁶⁷ Act of June 18, 1999, ch. 1087, 1999 Tex. Gen. Laws 3949 (codified as amended at TEX. FAM. CODE ANN. § 262.302 (2014)).

¹⁶⁸ Bernstein, *supra* note 155.

¹⁶⁹ See, e.g., Dale Lezon, *Too Old for Baby Moses Law, but It’s OK*, HOUSTON CHRON. (Apr. 20, 2010), <http://www.chron.com/news/houston-texas/article/Too-old-for-Baby-Moses-Law-but-it-s-OK-1698303.php>, archived at <http://perma.cc/6MBA-L7W9>; Act of June 18, 1999, ch. 1087, 1999 Tex. Gen. Laws 3949 (codified as amended at TEX. FAM. CODE ANN. § 262.302 (2014)).

¹⁷⁰ Act of June 18, 1999, ch. 1087, 1999 Tex. Gen. Laws 3949 (codified as amended at TEX. FAM. CODE ANN. § 262.302 (2014)).

¹⁷¹ LA. CHILD. CODE ANN. arts. 1150–1152 (2000); ALA. CODE § 26-25-1 (LexisNexis 2000).

¹⁷² See, e.g., CHILD WELFARE INFO. GATEWAY, INFANT SAFE HAVEN LAWS 2 (2013) [hereinafter INFANT SAFE HAVEN], available at <https://www.childwelfare.gov/pubPDFs/safehaven.pdf>, archived at <http://perma.cc/4RHH-J4T9>.

¹⁷³ Bernstein, *supra* note 155.

¹⁷⁴ Nathaniel Weixel, *Nebraska Enacts Unique Safe Haven Law*, PEW CHARITABLE TRUST STATELINE (Aug. 15, 2008), <http://www.pewstates.org/projects/stateline/headlines/nebraska-enacts-unique-safe-haven-law-85899387187>, archived at <http://perma.cc/V93Y-RLTJ>.

B. Policies that Have Swayed Legislators

In debating the adoption of safe haven laws around the country, advocates and legislators have articulated a number of different interests advanced by jettisoning the historical rule that child abandonment is wholly intolerable and moving towards protection of parents who choose to abandon under the ambit of a safe haven scheme. Those interests can be loosely placed into two categories: saving lives and fostering permanent family relationships.

1. Saving Lives: One Abandonment at a Time

The paramount interest argued to be advanced by the passage of safe haven legislation is nothing short of saving lives.¹⁷⁵ Roughly a third of the babies abandoned every year die, in part because they are left in dangerous situations, exposed to the elements and unsuitably provided for.¹⁷⁶ Hawaii's safe haven legislation, for instance, strives to encourage parents to leave their newborns in a safe place, "and thus save the newborn infant's life."¹⁷⁷

Even beyond the content of a dangerous abandonment environment, safe haven legislation recognizes that parents "may be under severe emotional stress"¹⁷⁸ and strives to provide them an alternative to parenting. Recognizing the potential for physical, mental, sexual, and emotional abuse, and also neglect by parents, the law sanctions the unthinkable as the lesser of two evils.¹⁷⁹

In essence, safe havens are child-focused, and serve as outgrowths of the ubiquitous best interest bent in family law.¹⁸⁰ Kansas's statute, for example, expressly notes that its provisions are designed to insure that "each child who comes within the provisions of the code . . . receive[s] the care, custody, guidance control and discipline that will best serve the child's welfare and the interests of the state, preferably . . . recognizing . . . the child's well-being."¹⁸¹ Removing children from homes with desperate parents, even when placed into the hands of the state, may, legislators have recognized, be preferable to forced parenting.

¹⁷⁵ See, e.g., Stenzel, *supra* note 163, at 1.

¹⁷⁶ Pollet, *supra* note 154, at 71.

¹⁷⁷ Act 7, 2007 Haw. Spec. Sess. Laws 960 (providing a safe place for newborns); HAW. REV. STAT. § 587D-2 (West 2007).

¹⁷⁸ MONT. CODE ANN. § 40-6-402 (2014); Act of Apr. 20, 2001, ch. 277, 2001 Mont. Laws 1299.

¹⁷⁹ KAN. STAT. ANN. § 38-2282 (West 2006); Act of May 22, 2006, ch. 200, 2006 Kan. Sess. Laws 1481, 1482.

¹⁸⁰ See generally Lynne Marie Kohm, *Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence*, 10 J.L. & FAM. STUD. 337, 337 (2008).

¹⁸¹ Act of May 22, 2006, ch. 200, 2006 Kan. Sess. Laws 1481; KAN. STAT. ANN. § 38-2282.

2. *Fostering Permanent Families*

States frequently articulate another policy behind safe haven legislation though, one far more remote than the immediate interest in child safety and well-being. Namely, many state statutes focus on safe haven legislation as advancing the perhaps otherwise unattainable interest of children in a “stable home life.”¹⁸² Nearly every safe haven statute is accompanied by an assumption of custody by the child welfare authority of the state in which the child is abandoned.¹⁸³ States tolerate, and even enthusiastically pass, safe haven legislation because it frees children for adoption in the long term, and with an adoptive placement comes the hope that a child has found a “permanent family setting.”¹⁸⁴ Of course, some states have recognized that the use of established adoption procedures from the start would be preferable to merely dropping a baby at a fire station.¹⁸⁵ But knowing the desperation of parents in the face of the birth of an unwanted child and the likelihood that safely abandoned infants will enter and successfully navigate the state’s adoption process, states have largely satisfied themselves that safe haven legislation facilitates the creation of permanent homes for children through eventual adoption.¹⁸⁶

Whether either of these policies is actually advanced by safe haven legislation is debatable. Critics charge, as discussed in Part IV.D, that safe haven legislation is not shown to actually save any lives, and that the laws are so rarely used that they are having no effect at all.¹⁸⁷ In reality, the true effectiveness of the provisions is not likely something that can be measured. Knowing that states believe they are saving lives and building “forever families,” however, aids in contextualizing and evaluating today’s safe haven schemes.

C. The State of the Safe Haven

The unanimity of state acceptance of safe haven legislation is, perhaps, deceiving. The adoption of safe havens in all fifty states¹⁸⁸ masks a vast underbelly of disagreement, if not with the existence of the institution

¹⁸² WASH. REV. CODE § 13.34.60 (West 2007); Act of Apr. 3, 2002, ch. 331, 2002 Wash. Sess. Laws 1689.

¹⁸³ INFANT SAFE HAVEN, *supra* note 172, at 5.

¹⁸⁴ KAN. STAT. ANN. § 38-2282; Act 7, 2007 Haw. Spec. Sess. Laws 960 (providing a safe place for newborns).

¹⁸⁵ HAW. REV. STAT. § 587D-2 (2007); Act 7, 2007 Haw. Spec. Sess. Laws 960 (providing a safe place for newborns).

¹⁸⁶ S.B. 2129, 57th Legis. Assemb., Reg. Sess. (N.D. 2001).

¹⁸⁷ *See, e.g.*, Carol Sanger, *Infant Safe Haven Laws: Legislating in the Culture of Life*, 106 COLUM. L. REV. 753, 788–800 (2006) (analyzing the efficacy of safe haven legislation in detail).

¹⁸⁸ Weixel, *supra* note 174.

altogether, then at least with the particulars of the doctrine. States disagree as to precisely what happens after the drop. From state to state, the baby is necessarily welcomed into “safe arms,”¹⁸⁹ but what happens next? Does the transfer necessarily include obtainment of important medical information about the child? Is the child to become available for adoption immediately? May the dropping adult regain custody of the child after a change of heart? Legislative attempts to answer these questions have produced little in the way of consistency. Moreover, substantial questions and divisions among states have arisen with respect to who may take advantage of safe haven legislation. And, perhaps most importantly, the age at which a child may be relinquished before safe haven confidentiality and anonymity is lifted varies rather dramatically among the states.

1. *Life After Abandonment*

One of the only universal truths of safe haven schemes is that they require the child’s physical transfer at a location presumed to be able to offer safe, albeit temporary, care.¹⁹⁰ Hospitals, emergency medical service providers, health-care facilities, fire stations, some law enforcement agencies, and sometimes even churches are generally alternatives, depending on the particulars of state law.¹⁹¹

Roughly half of the states require the receiving party to attempt to obtain some medical information about the child, including asking about major illnesses, diseases, and any “other information that might reasonably assist [child welfare authorities] in determining the best interests of the newborn child.”¹⁹² Many states even ask for identifying information, although the relinquishing party is generally not compelled to provide it.¹⁹³ Confidentiality and anonymity have been deemed altogether essential to the success of the safe haven option.¹⁹⁴ Doggedly pursuing too much information, and requiring that the relinquishing party provide it as a condition of the safe haven law’s application, would undermine the law entirely. One North Dakota leader articulated the problem as a “choice of two goods”—“the information from the adult versus the welfare of the child.”¹⁹⁵ Of course, states have chosen to favor the latter and have “decided [that] the welfare of the child would be a superseding good” when compared with the information that perhaps could be gathered from relinquishing parents.¹⁹⁶

¹⁸⁹ DEL. CODE ANN. tit. 16, § 907A (2003) (“Safe Arms for Babies” legislation).

¹⁹⁰ INFANT SAFE HAVEN, *supra* note 172, at 2–3.

¹⁹¹ *Id.* at 3.

¹⁹² Act 7, 2007 Haw. Spec. Sess. Laws 960 (providing a safe place for newborns).

¹⁹³ INFANT SAFE HAVEN, *supra* note 172, at 3–4.

¹⁹⁴ *Id.*

¹⁹⁵ *Hearing on S.B. 2129 Before the H. Comm. on Human Servs.*, 2001 Leg., 57th Sess. 4 (N.D. 2001) (testimony of Arnold Thomas, President of N.D. Health Care).

¹⁹⁶ *Id.* at 5.

Regardless of the information obtained when the child is relinquished, the receiving party is required to immediately notify child welfare authorities of the relinquishment.¹⁹⁷ Virtually every state statute then provides for assumption of custody by the child welfare authority of the state.¹⁹⁸ The goal, thereafter, is to assimilate the child into the existing adoption process, and to provide a safe and suitable home for the child as soon as possible.¹⁹⁹

The potential for reunification, and whether that remains a goal after a safe haven drop, varies widely among jurisdictions. Some states require that safe arms personnel ask the relinquishing parent whether he “plan[s] on returning to seek custody of the child in the future.”²⁰⁰ In other states, the dropping party is even provided a copy of an infant identification bracelet that will assist in matching the parent and child at a later time if reunification is sought.²⁰¹ The idea, of course, is to encourage use of the safe haven provisions by parents only after due deliberation; desperate, and temporary, desires on the part of parents to relinquish their children should not always be held against them in the event of a recovery of wits. What is clear, however, is that child welfare authorities are not required to “attempt to reunify the child with [his] parents, or . . . search for relatives of the child as a placement or permanency option.”²⁰² State adoption schemes typically require precisely that.²⁰³ But in the face of an abandonment, regular adoption protocol is altered in the best interest of the child. Child welfare authorities are charged, now, to find a safe, loving and, hopefully, permanent new home for the relinquished child.

2. *Stranger Drops and Paternal Protection*

Among the most compelling and controversial questions surrounding the state of modern safe haven laws is just who can take advantage of them. The theory is that they should be used only by parents.²⁰⁴ But the very anonymity that safe haven statutes must provide to be effective raises questions about the person relinquishing. Insuring that a relinquishing party has some legal connection to and right over the child is an exceptionally difficult proposition. Many states have chosen not to wade into the morass, and have simply

¹⁹⁷ INFANT SAFE HAVEN, *supra* note 172, at 5.

¹⁹⁸ See, e.g., WYO. STAT. ANN. § 14-11-103 (2013) (“The local child protective agency shall assume care and custody of the child immediately upon notice from the hospital. After receiving custody, the local child protective agency shall assist in placement of the newborn child pursuant to W.S. 14-11-105(a).”).

¹⁹⁹ INFANT SAFE HAVEN, *supra* note 172, at 5.

²⁰⁰ HAW. REV. STAT. § 587D-2 (2007); Act 7, 2007 Haw. Spec. Sess. Laws 960 (providing a safe place for newborns).

²⁰¹ INFANT SAFE HAVEN, *supra* note 172, at 4.

²⁰² *Hearing on S.B. 2129 Before the H. Comm. on Human Servs.*, 2001 Leg., 57th Sess. 1 (N.D. 2001) (statement of Sandi Tabor, North Dakota Deputy Att’y Gen.).

²⁰³ *Id.*

²⁰⁴ See generally INFANT SAFE HAVEN, *supra* note 172, at 3.

unconstitutionally deprives fathers of their due process rights.²¹⁶ The rules, it is argued, “not only deprive fathers who do not know they have a child an opportunity to find out, but also deny men who know they are fathers and have taken affirmative steps to parent (such as providing prenatal financial and emotional support to the mother) their right to due process.”²¹⁷

Some states have responded to the call for greater paternal protection. South Carolina, for instance, requires publication in television and radio broadcasts and in print media of all safe haven relinquishments.²¹⁸ “[A]ll known information about the infant and the circumstances surrounding the abandonment” are to be made available in an effort to provide fathers with the notice necessary to come in and seize the opportunity to parent.²¹⁹ The very nature of the safe haven beast, however—particularly its concomitant confidentiality—leaves fathers at a disadvantage. No court has yet evaluated a paternal charge of due process violation under safe haven legislation.²²⁰ Until that happens, and likely beyond, questions as to the fairness of the legislation and its ability to protect fathers’ interests, while simultaneously serving desperate women and needy children, are likely to persist.

3. Age: *The Elephant in the Room*

By far the most challenging question faced by state legislators in crafting safe haven legislation has been the question of age. How old is too old? The articulated purpose of the legislation is to protect babies from desperate mothers who are unprepared to parent.²²¹ And legislators no doubt forged ahead in adopting safe haven schemes with images like that of the Prom Mom in mind—troubled young women, perhaps even shocked by unexpected birth, find themselves wholly incapable of caring for a child, even temporarily, and look for a way to dispose of the evidence.²²² Safe havens grew up, then, as a response to the perceived problem of immediate child murder after birth. And it is clear that some state legislators even connect safe haven rules with abortion.²²³ The idea, realistic or not, is that mothers with knowledge of the safe haven relinquishment option may “choose life” rather than pursuing an abortion.²²⁴

²¹⁶ *Id.*

²¹⁷ *Id.* at 54.

²¹⁸ Dayna R. Cooper, Note, *Fathers Are Parents Too: Challenging Safe Haven Laws with Procedural Due Process*, 31 HOFSTRA L. REV. 877, 900 (2003).

²¹⁹ *Id.* at 900–01.

²²⁰ *Id.* at 878.

²²¹ See Tabor, *supra* note 202 (testifying before the North Dakota legislature and describing the bill as targeted at “young mothers, at their wits’ end, who may not know what else to do.”).

²²² *Id.* at 2.

²²³ See, e.g., Sanger, *supra* note 187, at 753.

²²⁴ *Id.* at 779–80.

In any event, the paradigm is that of relinquishment of a newborn, typically just a matter of hours after birth. Roughly a quarter of the states have borne that paradigm out legislatively, frequently using a time limitation that mirrors adoptive surrenders.²²⁵ Specifically, twelve states limit the application of safe haven legislation to relinquishment of infants seventy-two hours old or younger.²²⁶ Approximately twenty more extend the period to thirty days.²²⁷ Still others choose slightly lengthier periods, generally hovering in the sixty-day range.²²⁸ North Dakota and Missouri stand alone in allowing a child up to the age of one year to be relinquished under the protection of the safe haven scheme.²²⁹

Where an age limitation in the thirty- to sixty-day range has been selected, the articulated goal has been to give parents who might invoke the protections of the legislation the time to “evaluate all options and avenues available to them before” abandoning a child.²³⁰ The tumultuous and hormonal hours immediately following the birth of a child seemingly provide an insufficient window within which to truly, and logically, explore the possibilities. But lengthier periods concern child welfare experts, because of the likelihood that a greater bond between parent and child will be formed the longer the child remains in the parent’s care.²³¹

A bill introduced in Nebraska limiting safe haven protection to persons relinquishing infants up to seventy-two hours old initially provoked substantial concern from legislators not about the sense of the seventy-two-hour choice, as compared with some other maximum, but about “the ability of those receiving the infants to determine whether the infant dropped off was under [the] age limit.”²³² Of course, no age limitation chosen by state legislators could be applied with any degree of certainty. But the lengthier the period, the more likely medical personnel are to be confident that the relinquished child is within the range of that contemplated by the statute.²³³

²²⁵ INFANT SAFE HAVEN, *supra* note 172, at 2.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.* In Missouri, parents are guaranteed immunity from prosecution only if the child is under five days old at relinquishment. For children five days to one year old, relinquishing parents merely hold an affirmative defense to prosecution for child endangerment. MO. REV. STAT. § 210.950 (2014).

²³⁰ Diane K. Donnelly, Note, *Nebraska’s Youth Need Help—but Was a Safe Haven Law the Best Way?*, 64 U. MIAMI L. REV. 771, 774 (2010) (quoting *Introducer’s Statement of Intent for LB 6: Hearing on LB 6 Before the Comm. on the Judiciary*, 100th Leg., 1st Sess. 2 (Neb. 2007) (statement of Sen. Rich Pahls, Principal Introducer)), available at <http://uniweb.legislature.ne.gov/FloorDocs/100/PDF/SI/LB6.pdf>, archived at <http://perma.cc/9MAR-77DQ>.

²³¹ Brittany Neal, Note, *Reforming the Safe Haven in Ohio: Protecting the Rights of Mothers Through Anonymity*, 25 J.L. & HEALTH 347, 360–61 (2012).

²³² Donnelly, *supra* note 230, at 775.

²³³ *Id.*

Periods approaching a month have been thought by most state legislatures to appropriately strike the balance between the needs of the child and those of the relinquishing adult.²³⁴ With some minor variance, state legislatures have been able to coalesce around this window.²³⁵ Still, the age issue has proven itself exceptionally problematic and even led to a lengthy delay in some states' acceptance of the whole theory of safe haven legislation.²³⁶

The biggest, nationally-recognized debacle relating to safe haven legislation focused precisely on this issue. After more than seven years of debate on the topic, Nebraska found itself still unable to get a safe haven scheme enacted.²³⁷ Opposition was based on a wide array of complaints—from fathers' rights to the utility of the legislative schemes at all—but ultimately became focused on the age limit.²³⁸ Seventy-two hour age limits and thirty-day age limits were both rejected, largely owing to previously-articulated enforcement concerns.²³⁹ After an intense debate, a compromise was drafted, and ultimately enacted into law, which provided that “[n]o person shall be prosecuted for any crime based solely upon the act of leaving a child in the custody of an employee on duty at a hospital licensed by the State of Nebraska.”²⁴⁰ All age limitations were eliminated altogether and the statute as enacted into law merely carried the requirement that the relinquishment be of a “child.”²⁴¹ The bill became Nebraska law in 2008, and “[no] one realized the magnitude of problems the seemingly innocuous compromise would create.”²⁴²

Within weeks of the law's effective date, dozens of children were dropped at Nebraska hospitals by parents invoking the act.²⁴³ In the most shocking case, Gary Staton, a single Nebraska father whose wife died roughly a year before, dropped off nine children, ranging in age from one to seventeen years old, at an Omaha hospital.²⁴⁴ Staton was not the only parent to abandon teenage children. Indeed, within three months of the legislation's passage thirty-six children were left at safe haven drop-off sites.²⁴⁵ The vast majority

²³⁴ INFANT SAFE HAVEN, *supra* note 172, at 1–2.

²³⁵ *Id.*

²³⁶ Donnelly, *supra* note 230, at 774–75.

²³⁷ *Id.*

²³⁸ *Id.* at 775–76.

²³⁹ *Id.* at 776.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² Donnelly, *supra* note 230, at 775.

²⁴³ *Id.*

²⁴⁴ Joshua Rhett Miller, *Father Who Ditched Nine Kids via Safe Haven Law Has Twins on the Way*, FOX NEWS (June 30, 2009), <http://www.foxnews.com/story/2009/06/30/father-who-ditched-nine-kids-via-safe-haven-law-has-twins-on-way/>, archived at <http://perma.cc/53JU-SLEZ>.

²⁴⁵ *Id.*

of those children were teenagers.²⁴⁶ Only one was younger than six years old.²⁴⁷ None were babies.²⁴⁸ Children were driven by parents, from Iowa, Michigan, and even Georgia, to be abandoned under the statute's provisions.²⁴⁹

Both politicians and the public alike were shocked, and then-Governor Dave Heineman called lawmakers back into special session within months "to fix the law, saying he could wait no longer to address what had become a state embarrassment."²⁵⁰ After the announcement of the special session, one California mother drove more than 1,200 miles to drop a fourteen-year-old boy at a Nebraska hospital, just hours before the end of the no-age-limitation safe haven law.²⁵¹

"Parents who had used the law and children's rights groups begged the Legislature not to lower the age limit, saying the safe-haven statute was the only resource for desperate families."²⁵² But in the end, the Nebraska legislature revised its safe haven provisions just over three months after they came into effect to include a thirty-day age limitation.²⁵³

The Nebraska experience highlighted serious problems with the availability of, and access to, social services for needy families.²⁵⁴ Those relinquished aside, dozens *more* children were brought to safe haven locations and left after social workers offered "respite care, parenting classes and referrals" to parents instead.²⁵⁵ Some legislators were sympathetic to the sheer dearth of help available for families with older children.²⁵⁶ But the majority of legislators agreed with the need to modify safe haven legislation to return to its roots—the protection of infants.²⁵⁷ And as the nation watched, a new need for a rule approaching uniformity began to be articulated. Governor Heineman, in describing the reasons for the law's revision, particularly noted that a change was warranted to "prevent those outside the state from bringing their children

²⁴⁶ Kevin O'Hanlon, *5 Years Later, Nebraska Patching Cracks Exposed by Safe-Haven Debacle*, LINCOLN J. STAR (Jan. 21, 2013), http://journalstar.com/special-section/epilogue/years-later-nebraska-patching-cracks-exposed-by-safe-haven-debacle/article_d80d1454-1456-593b-9838-97d99314554f.html, archived at <http://perma.cc/6J8P-S9GW>.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ Miller, *supra* note 244.

²⁵² O'Hanlon, *supra* note 246.

²⁵³ Erik Eckholm, *Nebraska Revises Child Safe Haven Law*, N.Y. TIMES (Nov. 21, 2008), http://www.nytimes.com/2008/11/22/us/22nebraska.html?pagewanted=all&_r=0, archived at <http://perma.cc/G4CM-M5ZN>.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ Miller, *supra* note 244.

to [a state with a more liberal safe haven age limitation] in an attempt to secure services.”²⁵⁸

Nebraska essentially served to shore up belief in the need for some avenue of relief for desperate parents, and simultaneously reinforced a view that such relief should be substantially limited in time. In the wake of the Nebraska revision, only one state has lengthened its safe haven age limitation—from thirty days to sixty days.²⁵⁹ And with North Dakota as the only remaining outlier, states have become rather firmly entrenched, though reluctantly so, in limitations of less than two weeks.²⁶⁰

D. *All for Naught?*

Nebraska’s safe haven legislation has been described as “one of the most well-intended laws ever passed . . . but it turned into one of the biggest messes state lawmakers ever created and exposed” problems the state still has not solved.²⁶¹ Much the same may be said for safe haven laws nationwide. And worse still, many have begun to question whether the problems caused by safe haven legislation are all for naught. Are safe havens effective at curbing any of the problems they were designed to address? Or, in sanctioning child abandonment, have they simply created an additional set of societal ills?

Professor Carol Sanger, in her work exploring safe haven laws nationwide, has eloquently suggested that the question may be an impossible one to answer, “for it requires defining what counts as ‘success’ in the realm of baby-saving.”²⁶² Advocates of safe haven provisions have long-advocated a modest “one baby” goal.²⁶³ And in the wake of relatively frequent use of safe havens nationwide, they have all but declared victory.

Hundreds of babies have been relinquished under safe haven legislation. Florida alone experienced more than a hundred safe haven relinquishments in just seven years.²⁶⁴ Some estimates suggest that safe havens save roughly forty babies each year, although definitive numbers don’t currently exist.²⁶⁵ What is absolutely clear is that women across the country have dropped children at

²⁵⁸ *Id.*

²⁵⁹ LA. CHILD CODE ANN. art. 1150.3 (2014) (extending Louisiana’s safe haven relinquishment age limitation from thirty days to sixty days, ten years after the legislation’s initial passage).

²⁶⁰ INFANT SAFE HAVEN, *supra* note 172, at 2 n.4; *see also supra* note 229 and accompanying text.

²⁶¹ O’Hanlon, *supra* note 246.

²⁶² Sanger, *supra* note 187, at 788.

²⁶³ Pollet, *supra* note 154, at 73 (stating that proponents of the legislation maintain that the legislation is worthwhile even if one baby is saved); *see also* Sanger, *supra* note 187, at 789.

²⁶⁴ Stacie Schmerling Perez, *Combating the “Baby Dumping” Epidemic: A Look at Florida’s Safe Haven Law*, 33 NOVA L. REV. 245, 260 (2008).

²⁶⁵ Pollet, *supra* note 154, at 73.

safe haven locations under the protection of the acts.²⁶⁶ What is far less clear is how many of those children were “saved” by safe haven legislation.

Proponents of the laws tend to assume that any baby dropped is a baby saved.²⁶⁷ But as experts point out, ascertaining the true effectiveness of safe haven legislation is actually quite complicated.²⁶⁸ The problem is that “we simply do not know what the fate of the babies would have been had [these] laws not been in place.”²⁶⁹ “[T]here is no way to know if Safe Haven babies would have been abandoned or killed, been discovered or died, kept by their families or placed for adoption.”²⁷⁰

Still, given that more than 20,000 infants are abandoned in the United States each year, and roughly a third of them are found dead, it requires little stretching to conclude that safe haven drops have prevented *some* infant deaths.²⁷¹

Sanger suggests that tradeoffs in terms of the lack of prenatal care and diversion of resources from other means of targeting infant murder may actually mean that safe havens fail to provide any net gain of life.²⁷² The lives immediately saved at infant drop may cost others. In short, counting infant bodies is a relatively ineffective means of measuring safe havens’ effectiveness.²⁷³

Moreover, mothers around the country continue to abandon their children in unsafe (and unapproved) locations, even in the wake of universal safe haven enactment.²⁷⁴ Florida’s safe haven program, for instance has seen almost fifty infants illegally dumped in “risky places including dumpsters, front porches, bushes, hotel trash cans, the beach, a canal, and a church.”²⁷⁵ More than half of those babies were found dead.²⁷⁶

Many blame the failure of the attendant educational effort.²⁷⁷ The fiscal implications of safe haven bills have been exceptionally important to state legislatures, particularly in the midst of a recession.²⁷⁸ Safe haven advocates knew from the start that their bills were likely to be accepted only if the fiscal impact was minimal.²⁷⁹ As a result, most states signed safe havens into law “without formal attention to how women who might use it would find out

²⁶⁶ Sanger, *supra* note 187, at 789.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ Pollet, *supra* note 154, at 71.

²⁷² Sanger, *supra* note 187, at 789–91.

²⁷³ *Id.* at 790.

²⁷⁴ *Id.* at 788.

²⁷⁵ Perez, *supra* note 264, at 263.

²⁷⁶ *Id.* at 263–64.

²⁷⁷ *Id.*

²⁷⁸ Sanger, *supra* note 187, at 792.

²⁷⁹ *Id.*

about it In Ohio, for example, the fiscal impact of proposed Safe Haven legislation was assessed at essentially zero.”²⁸⁰ Not all states have acted with such disregard for the practicalities of the legislation’s success in achieving its articulated goals. New York invested \$1 million in ensuring the effectiveness of its program, complete with publicity for the program and a toll-free information and referral hotline open around the clock.²⁸¹ Florida markets its program with billboards, bus stop coverings, mall benches, and radio and television advertisements.²⁸² Several states include safe haven education as part of the sex education curricula in both public and private schools.²⁸³ To be sure, though, the educational effort related to safe havens has been largely a failure.²⁸⁴ Far more could be done, and safe haven proponents argue that the potential to save those many newborns still abandoned in life-threatening situations is worth the cost of education.

Perhaps the most difficult question to answer in addressing the effectiveness of safe haven legislation, however, is whether *any* educational effort, no matter how robust, could ever make any meaningful change in rates of neonaticide. State legislatures pass safe havens with the Prom Mom, and others similarly situated, in mind.²⁸⁵ But there are substantial questions about whether desperate pregnant women “will give these [safe haven] benefits much thought, if they are thinking clearly at all.”²⁸⁶ Women who kill their infant children are generally very young (with an average age of nineteen), single, and living at home.²⁸⁷ Almost all have hidden their pregnancies, received no prenatal care, and delivered their babies at home.²⁸⁸ They frequently enter a state of deep denial and childbirth results in a “brief disassociative state,” which results in the child’s murder.²⁸⁹ No educational effort can reach these women, because they simply are not well and cannot process the message.²⁹⁰ They are “confused, upset, and in denial. These girls are extremely unlikely to drive or ask for a ride to a designated Safe Haven to legally relinquish their newborn, especially one that is staffed with authority figures.”²⁹¹ With respect to this segment of the population, it may be that safe havens simply cannot effectively function.

²⁸⁰ *Id.*

²⁸¹ Pollet, *supra* note 154, at 73–74.

²⁸² Perez, *supra* note 264, at 261–62.

²⁸³ *See, e.g., id.* at 262; Sanger, *supra* note 187, at 792–94.

²⁸⁴ *See, e.g.,* J.J. Hensley, *Many Remain Unaware of Baby Safe Haven Laws*, USA TODAY (Oct. 12, 2013, 5:41 PM), <http://usatoday.com/story/news/nation/2013/10/12/advocates-struggle-to-raise-awareness-of-baby-safe-haven-laws/2973177/>, archived at <http://perma.cc/B6N5-ECNF>.

²⁸⁵ *See, e.g.,* Tabor, *supra* note 202.

²⁸⁶ Sanger, *supra* note 187, at 797.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.* at 799.

²⁹⁰ *Id.* at 800.

²⁹¹ Perez, *supra* note 264, at 266 (footnote omitted).

Some argue, finally, that the efficacy of safe havens may never be quantified, but that the rules may be particularly useful nonetheless. Essentially, their utility is borne out in their hortatory nature.²⁹² “[W]hether or not the laws accomplish very much in fact” they send a message.²⁹³ Here, that message is that child welfare and infant life is to be protected in the most vigorous manner possible.²⁹⁴ Such an expression is itself useful, even laudable. Critics charge that safe havens send other important messages as well—namely messages that discourage parental responsibility and provide an easy way out of a “less-than-dire” situation.²⁹⁵

Essentially all that can be definitively concluded about the success of safe haven legislation, then, is that it is hotly debated by child welfare experts even ten years after its widespread acceptance. Regardless, there is little momentum in any state to do away with the scheme; indeed, recent modifications to safe haven legislation have seen them grow slightly more, not less, expansive.²⁹⁶ Measurable improvement aside, safe havens seem to be around for the long haul.

V. STATE-SANCTIONED DISRUPTION AS THE ONLY VIABLE SOLUTION TO ADOPTION CRISIS

Adoptions that simply are not positive for any of the parties involved are real, and very serious. Child welfare workers and policymakers alike have turned a blind eye on the reality that some families should not continue a placement, even after it has been finalized. We simply don’t want to believe that adoption is not forever, and we certainly don’t want to approve additional trauma to an already vulnerable child. But hard evidence of a substantial increase in unsuccessful adoption outcomes, including those involving tragic consequences, demonstrates that it is our duty to acknowledge the possibility that, on rare occasions, actually sanctioning some form of adoption disruption is the best possible solution.

To date, the rallying cry of experts and policymakers has been in the direction of increasing social services for adoptive families in crisis, or of better educating adoptive parents about the services that may be available to them. Indeed, every tragic story described in this piece—from the case of Hana Williams to the Prom Mom—shares one thing in common: they all

²⁹² Sanger, *supra* note 187, at 791.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ Debbe Magnusen, *From Dumpster to Delivery Room: Does Legalizing Baby Abandonment Really Solve the Problem?*, 22 J. JUV. L. 1, 21 (2001–2002).

²⁹⁶ *See, e.g.*, LA. CHILD CODE ANN. art 1150.3 (2014) (extending Louisiana’s safe haven relinquishment age limitation from thirty days to sixty days, ten years after the legislation’s initial passage).

served as rallying cries for increased social services for adoptive families.²⁹⁷ It would be a simple solution, and it is one always proffered when it is needed to push aside the possibility of state-sanctioned relinquishment.²⁹⁸ As a solution, it just sounds better. Adoption is “forever,” and thinking in terms of how to make forever possible rather than making an exception to forever is the path most frequently chosen.

But the truth is that increased social service is a siren song. Focusing on it as the exclusive solution to the adoption crisis for so many years has not served society well, and it is time to recognize the shortcomings of social services as a solution.

In response to adoption crises, policymakers and child welfare experts have frequently called for increased education for adoptive parents about the challenges and pitfalls of adoption and parenting.²⁹⁹ But the vast majority of adoptive parents already undergo *substantial* education before a child’s placement. For parents adopting through the foster care system, the state provides useful and comprehensive education as to the challenges these families may face and as to the help that is available when they struggle.³⁰⁰ For parents adopting internationally, one of the essential features of the Hague Convention was to mandate more comprehensive education for adoptive parents.³⁰¹ It requires at least ten hours of pre-placement education.³⁰² Even for parents adopting internationally from non-Hague countries, and for those adopting domestically through agency adoption, hefty advance educational requirements are imposed not by any government, but by adoption agencies,

²⁹⁷ See, e.g., Kathryn Joyce: *Aftermath of Hana Williams’ Death, and of Ethiopian Adoptions*, LIGHT OF DAY STORIES (Nov. 11, 2013), <http://lightofdaystories.com/2013/11/11/kathryn-joyce-aftermath-of-hana-williams-death-and-of-ethiopian-adoptions/>, archived at <http://perma.cc/WA4Z-V7M2> (calling for increased social services for adoptive families).

²⁹⁸ See, e.g., VICTOR GROZE, SUCCESSFUL ADOPTIVE FAMILIES: A LONGITUDINAL STUDY OF SPECIAL NEEDS ADOPTION 113–16 (1996).

²⁹⁹ See, e.g., Dawn Davenport, “*Re-Homing*” *After Adoption Disruptions*, NAT’L INFERTILITY & ADOPTION EDUC. ORG. (Oct. 9, 2013), <http://www.creatingafamily.org/blog/re-homing-after-adoption-disruptions/>, archived at <http://perma.cc/44KV-TKR3> (calling for more education for adoptive parents as a solution to the rehoming crisis); LEGAL CTR. FOR FOSTER CARE & EDUC., BLUEPRINT FOR CHANGE: EDUCATION SUCCESS FOR CHILDREN IN FOSTER CARE (2d ed. 2008), available at http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/education/blueprint_second_edition_final.authcheckdam.pdf, archived at <http://perma.cc/9D5U-UW76>.

³⁰⁰ See, e.g., Lili Mostofi, *How to Become a Foster Parent in San Diego County*, 11 J. CONTEMP. LEGAL ISSUES 576, 577 (2000).

³⁰¹ U.S. DEP’T OF ST. BUREAU OF CONSULAR AFF., *Hague vs Non-Hague Adoption Process*, INTERCOUNTRY ADOPTION, <http://travel.state.gov/content/adoptionsabroad/en/hague-convention/hague-vs-non-hague-adoption-process.html> (last visited Mar. 5, 2015), archived at <http://perma.cc/TXX3-99P3> (chronicling education requirements for Hague and non-Hague countries)

³⁰² *Id.*

which, of course, have a strong interest in the success of their placements.³⁰³ Adoptive parents are generally better educated on the pitfalls of parenting than are their biological counterparts,³⁰⁴ and there is almost no adoptive parent who would report being unfamiliar with the special problems that face adoptive families in adjusting to a new family life.³⁰⁵ Focusing on education of adoptive families, then, as a means of solving adoption crisis is a feel-good, simple attempt at a solution that is likely to have no real-world impact.

Beefing up counseling services provided by adoption agencies or the state is a frequently articulated alternative.³⁰⁶ But even in the face of consistently reported crisis outcomes as a result of failing placements, neither adoption agencies nor states have been willing to provide the type of expensive and ongoing care that some families need. Changing the law to require them to provide this sort of care is not only likely to be politically untenable, but it is also an overly simplistic solution that is not likely to effect any real change.

For agencies, adoption is big business these days.³⁰⁷ Even for “non-profit,” charitable brokers of adoption, fees charged adoptive parents for the placement of a child are enormous.³⁰⁸ Counseling and other costs of adoption are already passed on to adoptive parents.³⁰⁹ Adoption agencies, in other words, are going to be unwilling to absorb the very high cost of extensive

³⁰³ See, e.g., *Courses for Prospective Adoptive Parents*, ADOPTION LEARNING PARTNERS, <http://www.adoptionlearningpartners.org/adopting/index.cfm> (last visited Apr. 8, 2015), archived at <http://perma.cc/8XHQ-HQ7S> (a well-known provider of adoption preparation and education services).

³⁰⁴ See, e.g., *ACF Adoptive Parent Education—10 Hours Required*, ADVOC. FOR CHILD. & FAMS., http://www.adoptionflorida.org/adoption_class.html#VOoJhU10yUk (last visited Mar. 5, 2015), archived at <http://perma.cc/X5UH-56V3> (describing the pre-adoptive educational process necessary for adoptive parents in Florida).

³⁰⁵ See, e.g., CHILD WELFARE INFO. GATEWAY, IMPACT OF ADOPTION ON ADOPTIVE PARENTS 2 (2010), available at <https://www.childwelfare.gov/pubPDFs/impactparent.pdf>, archived at <http://perma.cc/JC77-HZWV> (referencing common problems adoptive parents face in adjusting to the new reality of adoption).

³⁰⁶ See, e.g., Kate Snow, Kevin Monahan & Monica Alba, ‘*The Wildest Ride*’: *Adoptive Parents Struggle to Conquer Trauma*, NBC NEWS (Mar. 21, 2014, 5:04 AM), <http://www.nbcnews.com/storyline/re-homing/wildest-ride-adoptive-parents-struggle-conquer-trauma-n58891> (describing counseling as an option for adoptive families suffering difficulty), archived at <http://perma.cc/5VFY-L68F>.

³⁰⁷ See, e.g., Sandra Patton-Imani, *Redefining the Ethics of Adoption, Race, Gender, and Class*, 36 LAW & SOC’Y REV. 813, 827 (2002).

³⁰⁸ See, e.g., Alan Judd, *Nonprofit Adoption Agencies Often Profit Someone Other than Children, Families*, ATLANTA J.-CONST. (Apr. 26, 2010, 11:07 AM), <http://www.ajc.com/news/nonprofit-adoption-agencies-often-493623.html>, archived at <http://perma.cc/VV9T-RA57> (describing the hefty salaries and overhead of non-profit adoption agencies); CHILD WELFARE INFO. GATEWAY, COSTS OF ADOPTING 2 (2011), available at http://www.childwelfare.gov/pubs/s_cost/s_costs.pdf, archived at <http://perma.cc/2HYG-PN3W> (detailing the cost of adoption to prospective adoptive parents).

³⁰⁹ See UNIF. ADOPTION ACT § 7-103(a)(4), 9 U.L.A. 11 (1994); see also *In re Adoption of Stephen*, 645 N.Y.S.2d 1012, 1015 (N.Y. Fam. Ct. 1996) (finding that payment of counseling expenses was proper and reasonable).

post-placement counseling themselves. They will, rather, pass that cost on to adoptive families. At first blush, that may not seem such a bad outcome, until one considers that adoption already drains staggering sums from adoptive parents. Indeed, the cost of many adoptions today hovers in the range of \$40,000.³¹⁰ Adding more expenses to that sum quickly prices quality parents out of the market. Required post-placement counseling that relies on adoption agency facilitation, then, is simply not likely to happen.

Counseling provided on the state's dime is even less likely. State budgets are teetering on the brink nationwide, with social services frequently finding themselves as the first casualty of an economic downfall.³¹¹ Help for families is dwindling, not increasing, these days.³¹² And help for needy parents, even when the welfare of a child is at stake, is no exception.³¹³ Any legislation that seeks to force states to bear the cost of post-placement counseling is best described as dead on arrival.

Finally, a huge portion of adoptive placements that are unsuccessful involve children with mental health issues.³¹⁴ In order to continue in a family setting, adoptive parents need to access substantial and ongoing mental health services, both for their children and for themselves.³¹⁵ Private insurance frequently brings substantial coverage gaps for children with mental health needs.³¹⁶ Many state mental health institutions categorically refuse to treat children who remain under parental care rather than in state custody.³¹⁷ And parents who have tried to obtain mental health services for their children under Medicaid, "after filling out extensive applications and sometimes waiting more than a month to have their application processed," typically report dissatisfaction and very low levels of care received.³¹⁸ The mental health services many adopted children need to cope in a new family environment simply are not there, and, given the economic crisis of the last decade, are not likely to materialize.

Adoptees remaining in intact placements have been failed for many years by the lack of availability of social services. We can dream of social services becoming bigger and better, but experience has shown the dream to be just that. The economic realities today do not indicate that expanding social

³¹⁰ See CHILD WELFARE INFO. GATEWAY, *supra* note 308.

³¹¹ See, e.g., Jennifer Medina, *Approving Billions in Cuts to Social Services, California Reaches a Budget Deal*, N.Y. TIMES (June 21, 2012), available at http://www.nytimes.com/2012/06/22/us/california-reaches-a-budget-deal.html?_r=0, archived at <http://perma.cc/NTE5-GGEN>.

³¹² *Id.*

³¹³ See, e.g., Mary K. Reinhardt, *Arizona Program Cuts Put Strain on Families*, REPUBLIC (Feb. 25, 2012, 5:20 PM), <http://archive.azcentral.com/news/articles/2012/02/26/20120226cps-arizona-cuts-strain-families.html>, archived at <http://perma.cc/S4T7-MA89>.

³¹⁴ Coakley, *supra* note 2, at 116–17.

³¹⁵ *Id.* at 158–61.

³¹⁶ Donnelly, *supra* note 230, at 798.

³¹⁷ *Id.* at 798–99.

³¹⁸ *Id.* at 799.

services in any meaningful way is a real possibility on which child welfare workers should focus their energies.

Rather, the focus should shift to providing for a *regulated* form of adoption disruption that allows adoptive parents to relinquish children into state custody, much like biological children relinquish under safe haven provisions. The failure to recognize the need for child abandonment under limited scenarios has perpetrated far more horrors than that which would likely be visited by a narrow and closely watched disruption mechanism.

Developing a state-sanctioned disruption mechanism, both philosophically and practically, would be rather simple. Safe haven schemes already acknowledge that the time-honored view of families as forever must admit of some exceptions. From a theoretical standpoint, then, extending existing safe haven legislation merely serves to equalize the treatment of desperate and needy adoptive parents with their biological parent counterparts considering terminating the parent-child relationship. Pragmatically speaking, the infrastructure in place in all fifty states for safe haven schemes is easily transported to adoption. Safe places to relinquish children, which are equipped to temporarily care for a child safely, are already designated.³¹⁹ The process of making contact with child welfare authorities and processing children into the state system is already established.³²⁰ And once children are relinquished through the safe haven process, the state is involved at every subsequent step in the child's journey.³²¹ Extending safe havens to cover adoption could solve the problems private rehoming has exposed, and perhaps even provide some relief to adoptive parents who act dangerously in desperation and with no option for remedying a failing home situation.

Indeed, safe havens may be even more effective in actually saving lives, or in preventing lesser forms of child abuse, in the adoption context than they are for newborns. Some experts question the effectiveness of safe havens for biological newborns because they necessarily require some, albeit light, shedding of confidentiality.³²² Mothers must get to the safe haven location, and they must there manifest an intent to abandon their child.³²³ All states allow mothers to do this without identifying themselves, but the very act of in-

³¹⁹ See *supra* notes 189–90 and accompanying text.

³²⁰ See *supra* notes 196–98 and accompanying text. For children adopted internationally, the matter is complicated by immigration and citizenship issues. I have argued elsewhere that “return to sender” adoptions should even be permitted under very narrow circumstances; these rules may allow the child to return to his home country. See ANDREA B. CARROLL, REHABILITATING ADOPTION (forthcoming 2015) (on file with author). For these purposes, however, the existence of that possibility is not necessary. Once an adoption begun internationally is finalized, the child becomes a United States citizen, although he may or may not retain dual citizenship with his home country. Relinquishment of the U.S. citizen child into the U.S. foster care system, then, is appropriate, regardless of the origin of the adoptive placement.

³²¹ See *supra* notes 196–202 and accompanying text.

³²² Sanger, *supra* note 187, at 796–97.

³²³ *Id.* at 795–96.

person abandonment itself is likely to be perceived by mothers as a breach in confidentiality, particularly for those women who have hid their pregnancies from both family and friends.³²⁴ Because women may be reticent to lift the veil of secrecy shortly after the birth of an unwanted biological child, it has been argued that safe havens don't actually save any newborn lives; the women who most need them won't use them.³²⁵

The same concerns are not present in the adoption context. These days, very few families keep the fact of child adoption a secret, so mothers who would relinquish their children into state care are not faced with the risk of foregoing secrecy if they relinquish under a safe haven provision.³²⁶ Of course, in the wake of relinquishment, adoptive parents may be questioned as to the fate of the child, and it is more likely that the adoptive parents' community may learn of the disruption, which itself would be a useful deterrent to use of the safe haven mechanism.³²⁷ But the possibility of others ultimately learning of a disruption is one remote in time, and therefore not likely to prevent desperate adoptive parents from utilizing the safe haven mechanism during times of crisis. The utility of the safe haven in adoption is that it provides a desirable solution in an immediate crisis, precisely the scenario for which safe haven legislation was designed.³²⁸

Minor modifications of safe haven legislation would be necessitated to accommodate adoptive surrenders. Specifically, existing time periods within which relinquishment is possible under safe haven legislation would have to be rephrased in terms of time elapsed since finalization, rather than since birth. And substantial questions should arise as to whether relatively short safe haven relinquishment windows can be effective in the adoptive context. Adoptive bonds necessarily take time to develop,³²⁹ and it may well be that the thirty or sixty-day period provided under most state safe haven schemes for biological parents is not a sufficiently lengthy window for the safe haven relinquishment option to be of any real utility in the adoptive context.

Of course, strong arguments can be made for lengthening safe haven windows in the biological context. No doubt, more cases of abuse and neglect

³²⁴ *Id.* at 796.

³²⁵ *Id.* at 795–97.

³²⁶ *Id.* at 796.

³²⁷ BARTH & BERRY, *supra* note 9, at 183 (“One family described the conflict caused by the contradiction between the adulation and praise they received from friends, co-workers, and family for their magnanimous concern toward their adoptive daughter and their final decision to return her to the agency. . . . Families had some difficulty calling on the community to assist with the problems of parenting an adoptive child after so recently calling on them to welcome and accept the child as they were.”).

³²⁸ See Tabor, *supra* note 202 (testifying before the North Dakota legislature and describing the bill as targeted at “young mothers, at their wits’ end, who may not know what else to do”).

³²⁹ See generally Kathleen S. Bean, *Reasonable Efforts: What State Courts Think*, 36 U. TOL. L. REV. 321, 351 (2005) (describing the need for a child to be free from interference that inhibits developing bond with parents).

of biological children at the hands of their parents could be curbed if all states extended safe haven legislation to a year, as do North Dakota and Missouri.³³⁰ But the obvious cost is additional trauma to the child. Short safe haven windows strike the balance between the needs of parents and child trauma in a more child-centered way.

Whatever time period states have settled on for relinquishment in the biological context should be used in the adoptive context as well, with reevaluation frequently conducted to determine whether periods are lengthy enough, both in the biological and adoptive contexts, to address safe haven legislation's intent. Adaptation is likely to be necessary as safe havens begin to be used by adoptive parents, and the need to adapt safe haven legislation for adoption will allow states to capitalize on the opportunity to make much-needed changes to safe havens, even in the biological context.

VI. CONCLUSION

The players in child welfare can go on brushing the reality of unsuccessful adoptive placements under the rug. But that attitude does nothing to address the realities of child abuse at the hands of adoptive parents, the horrors of private rehoming, and the fact that a coming criminalization of private rehoming will leave some adoptive parents more desperate than ever before. Burying our heads in the sand, and simultaneously calling for increased social services that will simply never come to pass, has only led to tragic consequences.

It is difficult for those who care for children to even conceive of the possibility of sanctioning disruption of a finalized adoption. It goes against every ideal held dear about the child welfare system in this country. But romanticizing the adoptive family is no longer a possibility. As one expert remarked, “[i]f you think love conquers all, you’re not paying attention.”³³¹

Some families are just not destined to be forever. It is time that states recognize the struggles of adoptive parents to the same degree they do for biological parents, and extend to them the possibility of a state-sanctioned and state-regulated disruption mechanism in the interest of children, adoptive parents, and all those concerned with the welfare of adopted children.

³³⁰ N.D. CENT. CODE § 27-20-02 (2014); MO. REV. STAT. § 210.950 (2014).

³³¹ 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/>, archived at <http://perma.cc/TT79-VJTC> (quoting Executive Director of the Evan B. Donaldson Adoption Institute on the reality of adoptive disruption).

