

WHERE DID ALL THE SOCIAL WORKERS GO? THE NEED TO
PREPARE FAMILIES FOR ADOPTION, ASSIST POST-ADOPTIVE
FAMILIES IN CRISIS, AND END RE-HOMING

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Megan Testerman’s Note, *A World Wide Web of Unwanted Children: The Practice, the Problem, and the Solution to Private Re-Homing*,¹ offers a detailed overview of private re-homing, provides an analysis into the root causes, and offers child-centered solutions to the practice. Private re-homing is the process of engaging in the transfer of children from one adoptive home to a non-licensed caregiver for the purposes of permanently altering the child’s family make-up.² In many instances, this treats children as commodities.³ Testerman explains that parents eager to relinquish custody of their children often advertise their children online, offering them to individuals who would likely not be able to adopt through legal means.⁴ Many of these children face repeated physical, sexual, and emotional trauma.⁵ While some states have taken steps to curb this practice,⁶ private re-homing remains largely unregulated, and endangers children who fail to thrive in adoptive placements.⁷ Testerman proposes legal solutions and calls for better pre- and post-adoption state support. My response expounds on the key issues raised in Testerman’s Note and offers additional insights into pre-adoption practices and post-adoption concerns.

Historically, adoption law did not focus on the best interest of the child.⁸ Fortunately, “[a]doption law has evolved to meet a new goal—protecting the best interest of the child.”⁹ This legal focus highlights society’s belief that adoptive children deserve safe and loving families, and that their well-being must be at the center of all potential adoptions.¹⁰ International, federal, and state adoption laws place this goal at the

1. S. Megan Testerman, Note, *A World Wide Web of Unwanted Children: The Practice, the Problem, and the Solution to Private Re-Homing*, 67 FLA. L. REV. 2103 (2015).

2. *See id.* at 2107.

3. *Id.* (explaining that private rehoming was historically a term used to describe “finding new placements for pets”).

4. *See id.*

5. *See id.* at 2120.

6. *See id.* at 2121.

7. *See id.* at 2120.

8. *Id.* at 2108–09 (citing Kathleen M. Lynch, *Adoption: Can Adoptive Parents Change Their Minds?*, 26 FAM. L.Q. 257, 258–59 (1992)).

9. *Id.* at 2108; *see also* 2 AM. JUR. 2D *Adoption* § 131 (2016) (“It is the duty of the trial court in adoption matters to determine whether the adoption would be in the child’s best interests before the court may grant a petition for adoption.”).

10. *See* 2 AM. JUR. 2D *Adoption* § 131 (2016).

forefront.¹¹ State agencies offer guidance and supervision to those involved in the adoption process.¹² Such laws require home studies, background checks, and training to ensure that potential adoptive parents are ready to take custody of a child available for adoption.¹³ However, there is little state oversight once an adoption is finalized.¹⁴

Testerman's Note focuses on children adopted internationally. She explores the historical underpinnings of U.S. adoption policy and analyzes international adoption covenants. She discusses the United Nations Convention on the Rights of the Child and explains, "one reason the United States did not sign the [UNCRC] was because it stated that institutions in the child's home country were preferable to international adoption."¹⁵ Unlike the UNCRC, the Hague Convention's focus fit better with existing American ideologies.¹⁶ The United States and the Hague Convention both recognize "the best interests of the child by stating that adoption, even international adoption, is more desirable than a child living in an institution."¹⁷ Hence, many families are eager to adopt children via international placement agencies.¹⁸ Unfortunately, like state agencies, private adoption agencies rarely assist families after the adoption is finalized.¹⁹

11. *Id.*; Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption art. 1, May 29, 1993, S. TREATY DOC. NO. 105-51 [hereinafter Convention on Protection of Children].

12. *See, e.g., Child Welfare*, FLA. DEP'T OF CHILDREN & FAMILIES, <http://www.myflfamilies.com/service-programs/child-welfare> ("The Florida Department of Children and Families is committed to the well-being of children and their families. Our responsibilities encompass a wide-range of services, including—among other things—assistance to families working to stay safely together or be reunited, foster care, youth and young adults transitioning from foster care to independence, adoption.").

13. *See generally Criminal Background Checks for Prospective Foster and Adoptive Parents*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/pubPDFs/background.pdf> (listing such laws and their requirements).

14. *See* Testerman, *supra* note 1, at 2120.

15. Testerman, *supra* note 1, at 2111 n.48; *see also* Laura McKinney, *International Adoption and the Hague Convention: Does Implementation of the Convention Protect the Best Interests of Children?*, 6 WHITTIER J. CHILD & FAM. ADVOC. 361, 382, 384 (2007) ("The [UN]CRC's ambiguous stance towards international adoption, along with concerns that the practice of international adoption was difficult to coordinate and susceptible to abuse, led to the development of the Hague Convention in the spring of 1993.").

16. *See generally Hague Adoption Process*, INTERCOUNTRY ADOPTION, <https://travel.state.gov/content/adoptionabroad/en/adoption-process/how-to-adopt/hague-adoption-process.html> (last updated Oct. 22, 2013) ("The primary principles of the Convention are to ensure that each adoption is in the best interest of the child and to prevent the abduction, sale, and trafficking of children.").

17. Testerman, *supra* note 1, at 2111; Convention on Protection of Children, *supra* note 11.

18. *See* Testerman, *supra* note 1, at 2109.

19. *See id.* at 2120.

The agencies involved in adoption placement are rarely involved in post-adoption support largely because international, federal, and state laws provide few requirements and offer little guidance for instances when these placements go awry.²⁰ Testerman masterfully highlights this missing piece. The risk of placement disruption is likely elevated when children come from a background of trauma, abuse, or neglect.²¹ While parents often have the best of intentions when initiating an adoption, many do not receive adequate background information regarding their prospective adoptive child.²²

Adoptive parents often struggle to integrate their newest child into the family unit. While many families overcome these adversities, sometimes adoptions fail. When this occurs, the situation is termed an adoption dissolution.²³ The U.S. Department of State reported that in 2011 “six adoptive placements made in the United States from another country through the Hague Adoption Convention were disrupted.”²⁴ Nine thousand three hundred and twenty completed intercountry adoptions occurred during the same time period.²⁵ The statistics are quite different with regard to adoption disruptions, which occur after the child is placed in the prospective adoption home, but before the adoption is finalized.²⁶ “Even the most conservative estimates suggest a disruption rate of seven percent.”²⁷ However, those states which have endeavored to track disruption rates noted that they were “as high as twenty percent and adoption caseworker speculation has long run closer to fifty percent.”²⁸ The U.S. Department of Health and Human Services acknowledges that “[t]he precise number of disrupted adoptions resulting in re-homing is not

20. *Id.* at 2116–17.

21. For a comprehensive overview pertaining to the factors that contribute to emotional distress in adopted children, see Cassandra Simmel, *Risk and Protective Factors Contributing to the Longitudinal Psychosocial Well-Being of Adopted Foster Children*, 15 J. OF EMOTIONAL & BEHAV. DISORDERS 237, 237 (2007).

22. *See, e.g.,* Harshaw v. Bethany Christian Servs., 714 F. Supp. 2d 771, 778–79 (W.D. Mich. 2010) (finding that the placing agency provided the parents with incomplete information regarding their adopted child).

23. *See* Andrea B. Carroll, *Breaking Forever Families*, 76 OHIO ST. L.J. 259, 261 & n.10 (2015).

24. *Adoption Disruption and Dissolution*, CHILD WELFARE INFO. GATEWAY 3, https://www.childwelfare.gov/pubPDFs/s_disrup.pdf.

25. *Id.*

26. *Id.* at 1 (“The term disruption is used to describe an adoption process that ends after the child is placed in an adoptive home and before the adoption is legally finalized, resulting in the child’s return to (or entry into) foster care or placement with new adoptive parents.”) (emphasis omitted); Carroll, *supra* note 23, at 262.

27. Carroll, *supra* note 23, at 262 (citing JENNIFER FOULKES COAKLEY, FINALIZED ADOPTION DISRUPTION: A FAMILY PERSPECTIVE 1 (2005)).

28. *Id.*

known.”²⁹ One must pause to consider whether the low international dissolution rates support Testerman’s assertion that some underprepared and overwhelmed adoptive parents are turning to private re-homing rather than choosing to dissolve the adoption through legal means.

Testerman highlights a number of root causes of private re-homing. She explains that agencies often provide inadequate medical and social history regarding prospective adoptive children. Testerman stresses that adoptive parents are provided with insufficient training to prepare them to parent adopted children. She highlights that “[s]adly for adoptive families needing help with their international adoptees, Congress specifically did not include funding for post-adoption services under the [Intercountry Adoption Act].”³⁰ Lastly, Testerman explains that families facing a failed adoption often feel they have few lawful options. Some adoptive parents know that there is an underground market for adopted children, and this quick-fix can seem promising to families in crisis. These structural concerns must be addressed by states and the federal government.

Transparency is critical when adoptive placements are made. Families who adopt children from foster care almost always work with social workers.³¹ These social workers provide prospective adoptive families with key information regarding their potential new children.³² This

29. Memorandum from U.S. Dep’t of Health & Human Servs., Admin. on Children, Youth & Families to State Agencies Administering or Supervising the Administration of Titles IV-B and IV-E of the Social Sec. Act, (May 30, 2014), <https://www.acf.hhs.gov/sites/default/files/cb/im1402.pdf> [hereinafter Memo from U.S. Dep’t of Health & Human Servs.].

30. Testerman, *supra* note 1, at 2116–17.

31. *Adoption, SOC. WORK POL’Y INST.*, <http://www.socialworkpolicy.org/research/adoption.html> (“The role of social workers, usually carried out under the auspices of public or private adoption agencies, is to help support both the birth and adoptive parents and children through the adoption process and provide services that are helpful to fostering a healthy and stable family.”).

32. See generally Diane Riggs & Joe Kroll, *Families Need the Whole Truth*, N. AM. COUNCIL ON ADOPTABLE CHILDREN, <http://www.nacac.org/adoptalk/wholetruth.html> (“When it comes to successful parenting, more information is better. In *Promoting Successful Adoptions*, Susan Smith and Jeanne Howard list ‘knowing the child’s history’ as a factor tied to adoption stability. Richard Barth and Marianne Berry, in *Adoption and Disruption*, observe that ‘families with less accurate preplacement information about the child will have less realistic expectations about behavior, resulting in long-term frustration for both parent and child.’ In fact, Barth and Berry found that ‘better information’ was clearly associated with fewer disruptions.”). The article also raises concerns that are important—but outside the scope of this response—specifically that

Confidentiality directives hold such sway for some that child information does not flow freely between workers or to children’s caregivers. Now, concerns about privacy mandates in HIPAA (the Health Insurance Portability and Accountability Act) are inspiring even less sharing—a trend we find deeply

information, including medical concerns, known behavioral issues, and details regarding the child's past trauma experiences, provides the adoptive family with critical information that allows them to make an informed decision before the adoption takes place.³³ It also provides helpful insights to allow families and professionals to troubleshoot before the adoption is finalized.³⁴ In addition to receiving this information prior to adoption, families who adopt from the dependency system are often supported after the adoption is finalized.³⁵ While courts relinquish jurisdiction once an adoption is finalized, many states have set up post-adoption support services networks.³⁶ These can be beneficial to struggling parents considering private re-homing.

Testerman's Note highlights that these services are rarely available to families who adopt internationally.³⁷ She states that "children adopted internationally pose different challenges from those adopted domestically because international adoptees have unique medical and behavioral problems."³⁸ It would be interesting to engage in a deeper discussion as to these problems, as it might help craft a personalized solution (or solutions) to the concern. However, unlike adoptions from state agencies, international child placement agencies might be less transparent with

troubling since full disclosure about a child's medical, educational, and social background is key to adoption success.

Id.

33. *Id.*; see also *Harshaw v. Bethany Christian Servs.*, 714 F. Supp. 2d 771, 798–99 (W.D. Mich. 2010) ("In the context of adoption, the requirements for imposing a duty of care are the magnitude and foreseeability of the harms of risks of harm that will occur if accurate health information is not provided, the resulting benefits of full disclosure to adoptive families and the entire society, and the minimal burden that exercising reasonable care imposes on an adoption service provider."); *Providing Background Information to Adoptive Parents*, CHILD WELFARE INFO. GATEWAY 2 (2012), https://www.childwelfare.gov/pubPDFs/f_backgroundbulletin.pdf ("Today, all 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, and Puerto Rico have statutes specifying information that must be collected and shared with adopting parents. However, stipulations regarding who may collect background information, what information must be collected, and the timeframe for collecting and providing information to adoptive families vary by State.").

34. Riggs & Kroll, *supra* note 32. These strategies might include setting up counseling services pre- and post-placement, and perhaps most importantly, for providing prospective adoptive parents with the training necessary to effectively transition the child from state care to private family life. See *Adoption*, *supra* note 31.

35. See, e.g., *Post Adoption Support: Support for Parents*, FLA. DEP'T OF CHILDREN & FAMILIES, <http://www.adoptflorida.org/post-adoption-support.shtml>.

36. For a listing of all post-adoption support services, see *Adoption Assistance by State*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/adoption/adopt-assistance/?CWIGFunctionsaction=adoptionByState:main.getAnswersByQuestion&questionID=7> (last visited Sept. 26, 2016).

37. Testerman, *supra* note 1, at 2115.

38. *Id.* at 2115.

regard to the child's past trauma experiences.³⁹

Unfortunately, both domestically and internationally adopted children who experienced abuse or neglect prior to adoption remain at risk after the adoption is finalized.⁴⁰ When an adoption is threatened, many families do not receive the necessary support from the government or social service agencies.⁴¹ These families might turn to the internet for solutions and support.⁴² The internet offers families quick access to adoptive parents who have traversed similar terrain.⁴³ These message boards are rarely run by mental health professionals.⁴⁴ While some boards appear to offer families advice to help the family achieve unity, others are mainly a place for disgruntled parents to vent.⁴⁵

Some of the online networks even provide a place for adoptive parents to advertise their unwanted adopted children and where others can find a child to bring into their family.⁴⁶ Through the use of online message boards and websites, struggling families attempt to find new homes for their troubled children.⁴⁷ Families post information about their child and individuals offer to step in as parental surrogates.⁴⁸ This practice places children in grave danger⁴⁹ and is rightfully at the heart of Testerman's concerns. She outlines a number of state statutes aimed at abolishing

39. See generally *Harshaw v. Bethany Christian Servs.*, 714 F. Supp. 2d 771 (W.D. Mich. 2010) (discussing the Russian agency's failure to disclose medical information); Pam Belluck, *In Lawsuit on Adoption, Focus Is on Disclosure*, N.Y. TIMES (April 27, 2010), http://www.nytimes.com/2010/04/28/us/28adopt.html?pagewanted=all&_r=0 ("No organization tracks the number of cases against adoption agencies, and academics and industry officials say many are settled out of court and sealed, so the outcomes are unknown. But these days, 'a far greater percentage of these wrongful adoption suits relate to international adoptions,' said Marianne Blair, a University of Tulsa law professor.").

40. Carroll, *supra* note 23, at 266.

41. See *id.* at 260.

42. Megan Twohey, *Americans Use the Internet to Abandon Children Adopted from Overseas*, REUTERS (Sept. 9, 2013), <http://www.reuters.com/investigates/adoption/#article/part1>.

43. See, e.g., *Disruption Support*, ADOPTION.COM, <https://adoption.com/forums/379/disruption-support/> (last visited Sept. 26, 2016); Mom's [sic] of Disrupted/Dissolved Adoption, FACEBOOK, <https://www.facebook.com/MomofDisruptedAdoption/> (last visited Sept. 26, 2016). There are many other message boards available for parents to talk about their adoption struggles.

44. See Testerman, *supra* note 1, at 2122.

45. See, e.g., *Disruption Support*, ADOPTION.COM, <https://adoption.com/forums/379/disruption-support/> (last visited Sept. 26, 2016); Mom's [sic] of Disrupted/Dissolved Adoption, FACEBOOK, <https://www.facebook.com/MomofDisruptedAdoption/> (last visited Sept. 26, 2016).

46. See Twohey, *supra* note 42.

47. See *id.* ("Reuters analyzed 5,029 posts from a five-year period on one Internet message board, a Yahoo group. On average, a child was advertised for re-homing there once a week. Most of the children ranged in age from 6 to 14 and had been adopted from abroad—from countries such as Russia and China, Ethiopia and Ukraine. The youngest was 10 months old.").

48. See *id.*

49. *Id.* (explaining that some children who were adopted through this process were severely abused).

these advertising practices, but highlights that many state laws fail to protect children from being advertised for the purposes of private re-homing.⁵⁰

Testerman correctly asserts that private re-homing is terribly traumatizing and inherently dangerous to children. The Note provides illustrative examples of the realities of this practice from an individual child's perspective.⁵¹ For example, children are often abused once rehomed.⁵² At the time of the re-homing, many children do not know if the new residence is permanent or temporary. Additionally, these children might have trouble accessing basic educational and health services due to the unlawful exchange of custody that took place.⁵³ Further, it is likely that the new placement is not prepared to offer the child the trauma-informed care he or she desperately needs.

It might be helpful to also consider the issue from the parent's emotional perspective. Many adoptive parents have a heavy heart when making a decision to interrupt an adoption.⁵⁴ These families see re-homing as a last resort.⁵⁵ For example, an article in the *Chicago Tribune* describes the numerous attempts Lori Gertz made to provide her adoptive child with the mental health services she desperately needed.⁵⁶ After being unsuccessful, Gertz and her husband felt they were out of options.⁵⁷ Further, Susan Resko, the director of the Child and Adolescent Bipolar Foundation explains, "[i]t's horrible that we live in a society where relinquishing custody is the only alternative for parents who want to keep everyone safe."⁵⁸

Testerman provides a number of remedies aimed at curbing private re-homing. She stresses that federal and state legislation is needed to stem this practice.⁵⁹ To that end, Testerman provides a model state statute offering child-centered, practical solutions.⁶⁰ Informed by effective existing state statutes, her recommendations would be an excellent way forward. Her model statute defines private re-homing and restricts both the practice of re-homing and the advertising of children for the purposes

50. See Testerman, *supra* note 1, at 2122–28.

51. See *id.* at 2106.

52. Twohey, *supra* note 42.

53. See Testerman, *supra* note 1, at 2120. A power of attorney is sometimes used, which does allow the new "caregivers" to access medical and educational services. *Id.*

54. See Bonnie Miller Rubin, *Adoption Interrupted*, CHI. TRIBUNE (Sept. 21, 2010), http://articles.chicagotribune.com/2010-09-21/news/ct-met-disrupted-adoption-0921_1_adoption-ellie-new-jersey-woman.

55. See *id.*

56. See *id.*

57. See *id.*

58. *Id.*

59. Testerman, *supra* note 1, at 2140.

60. See *id.* at 2142–45.

of re-homing. It sets forth procedures for obtaining court approval in instances where parents wish to place children in the temporary custody of another. The substance of her recommendations would be an asset to adopted children and would serve as a comprehensive solution for parents wishing to relinquish custody of a child for both the short and long term. It is important to note that while private re-homing affects adopted children more often than those who have never been adopted, the model statute rightfully addresses the private re-homing of all children—previously adopted or otherwise.

In sum, Testerman's Note offers a comprehensive overview of private re-homing and offers potential solutions to this dangerous practice. Left unregulated, this practice tears apart and endangers families. The government must step in to regulate the re-homing of children.⁶¹ But as Testerman explains, curbing the incidents of private re-homing requires more than a statute or legal prohibition.⁶² Forward-looking solutions must modify current adoption processes to preemptively address this growing concern.⁶³ At-risk families need support in the pre- and post-adoption period. In regards to pre-adoption, Testerman rightfully highlights the need to appropriately train and screen potential adoptive families. Adoptive parents must receive full disclosures regarding their potential adoptive child's medical and social history. These proactive measures can greatly stem the tide of private re-homing and offer parents meaningful tools to help their children.

As for pre-adoption, Testerman stresses that there is an immediate need for services to families once in crisis. While there is federal funding available to support post-adoption support services,⁶⁴ more must be done. Indeed, this lack in services is what forces many families to turn to the internet for assistance.⁶⁵ These parents seek private re-homing as a solution to family crisis. The government must offer these parents practical, affordable, and well-funded solutions to stem the tide of private

61. Cf. Memo from U.S. Dep't of Health & Human Servs., *supra* note 29 ("The Children's Bureau encourages states to review their laws and policies to ensure that the issues that arise through the practice of re-homing are adequately addressed and that supports are put in place to assist families, children and youth impacted by this practice.").

62. See Testerman, *supra* note 1, at 2132.

63. Memo from U.S. Dep't of Health & Human Servs., *supra* note 29 ("We encourage states to develop and provide a continuum of post-adoption services for adoptive families, both domestic and international.").

64. *Id.* ("Federal funding is available to all state title IV-B and IV-E agencies to support such services. State agencies may use Child Welfare Services dollars (title IV-B, subpart 1 of the Act) to provide services to keep children safe in their own homes, including pre-and post-adoption services. These services may be provided to any child or family the state title IV-B agency deems is in need of them and this may include families who have adopted internationally.").

65. Rubin, *supra* note 54 ("It's horrible that we live in a society where relinquishing custody is the only alternative for parents who want to keep everyone safe," said Susan Resko, director of the Child and Adolescent Bipolar Foundation.").

re-homing. These tools are vital to help families remain stable despite crisis, and serve as lifelines to children at risk for private re-homing.