

January 2016

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Recommended Citation

Sally T. Green, *The Law Demands Process for Rehomed Children*, 69 Ark. L. Rev. 729 (2016).
Available at: <http://scholarworks.uark.edu/alr/vol69/iss3/3>

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The Law Demands Process for Rehomed Children

Sally Terry Green *

I. INTRODUCTION

Not all couples are able, or even choose, to have children naturally.¹ Adoption, however, provides the legal and social framework for parents to raise non-biological children as their own.² Whether born naturally or adopted, children bring joy *and* sorrow to their parents who often struggle to provide not only physical but also emotional support.³ Adopted children pose challenges when they do not have the emotional skills to transition and bond with

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1. *I Can't Conceive - What's Next?*, PRACTICING PARENTS, <http://www.practicingparents.com/i-cant-conceive-whats-next/> [https://perma.cc/3G7M-E8GF]. In 2008, about 136,000 children in the United States were adopted. HOW MANY CHILDREN WERE ADOPTED IN 2007 AND 2008?, CHILD WELFARE INFO. GATEWAY 4, 8, 10-12 (2011), <https://www.childwelfare.gov/pubPDFs/adopted0708.pdf> [https://perma.cc/A2DU-MZQT].

2. *What is Adoption?*, DAVE THOMAS FOUND. FOR ADOPTION, <https://davethomasfoundation.org/adoption-guide/what-is-adoption/> [https://perma.cc/ZJM3-XUWN].

3. "We who rank among the group of parents who have adopted [and] raise[d] good kids and bad kids. We have prom kings and future scientists for children. Some of our children will grow up to lead their generation while carrying ours. Others will rot in prison. Some of us are very involved as parents; some are over-protective. There are those from our group who are notorious abusers. Others abandon their children; just like every other demographic that makes up a group of parents." John M. Simmons, *Rehoming is a Monstrous Act*, HUFFINGTON POST: THE BLOG (Sept. 18, 2013, 12:48 PM), http://www.huffingtonpost.com/john-m-simmons/rehoming-is-a-monstrous-act_b_3943583.html [https://perma.cc/XGW5-B62N].

their new families.⁴ In desperation, parents may seek to dissolve the adoption⁵ or disrupt it.⁶ In U.S. adoptions, the states set forth a process by which adoptive parents can rescind the adoption,⁷ ultimately returning the child to foster care or new adoption placement.⁸ Similarly, under the Hague Convention,⁹ the Central Authority¹⁰ will consider alternative placement when necessary to protect the best interest of the child.¹¹ If trouble with the adopted child

4. Megan Twohey, *Americans Use the Internet to Abandon Children Adopted From Overseas*, REUTERS INVESTIGATES (Sept. 9, 2013) [hereinafter Twohey, *Underground Market*], <http://www.reuters.com/investigates/adoption/#article/part1> [<https://perma.cc/86HW-FWJR>]. Adoptions oftentimes fail because the child has mental health problems and adoptive families simply do not have the resources needed to assist these types of issues. Andrea B. Carroll, *Breaking Forever Families*, 76 OHIO ST. L.J. 259, 294 (2015).

5. If the legal relationship that imposes the parental obligation is established by the adoption decree (finalized adoption) and the adoptive parents later seek to sever the relationship, then the adoption is “dissolved.” See The Child Welfare Information Gateway, *Adoption Disruption and Dissolution*, 31 CHILD. L. PRAC. 158, 158 (2012).

6. When the adoption process ends “after the child is placed in adoptive home” but before it is legally finalized, disruption occurs. *Id.*

7. Tiffany Woo, *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, 570 (2010).

8. See The Child Welfare Information Gateway, *Adoption Disruption and Dissolution*, *supra* note 5.

9. The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention) is a ratified agreement signed in 1993 between convention countries in an effort to create uniform standards for protection of international adoptions. For international law principles, see HAGUE CONFERENCE ON PRIVATE INT’L LAW, CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION 2 [hereinafter HAGUE CONVENTION] (translating Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption, May 29, 1993, 1870 U.N.T.S. 167, 170), <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69> [<https://perma.cc/P24N-RVR7>]. This international law governing adoptions supports the argument here for the states to mandate an administrative or judicial process like that which is proscribed in the Hague Convention. *Id.*

10. The Central Authority is the designated agency for funneling information to other convention countries and monitoring intercountry adoptions. See Joanna E. Jordan, Note, *There’s No Place Like Home: Overhauling Adoption Procedure to Protect Adoptive Children*, 18 J. GENDER RACE & JUST. 237, 248 (2015); see also HAGUE CONVENTION, *supra* note 9.

11. See HAGUE CONVENTION, *supra* note 9, at 5. Children that have been internationally adopted are particularly vulnerable to rehomings. Twohey, *Underground Market*, *supra* note 4.

persists after adoption finalization¹² and establishment of the parents' legal obligation, many parents resort to re-homing,¹³ a harmful and dangerous "remedy"¹⁴ in a world driven by immediate gratification and quick fixes.¹⁵

With a simple click of a mouse or a stroke on a keyboard, adoptive parents advertise the unruly adopted child on the Internet via a chat room or on a message board.¹⁶ In this particularly abhorrent fashion, adoptive parents participate in "private re-homing"¹⁷ of their children in a manner that calls into question civil and criminal abuse, as well as neglect laws enacted to regulate such behavior.¹⁸ These laws are designed, in part, to give both biological and adoptive children protection under the law¹⁹ and to ensure that the state acts in their best interest in providing for their care and wellbeing.²⁰ For example, parental termination²¹ and emancipation cases²² require that the judicial process operates to determine whether to sever the parent-child relationship. Likewise, the law must ensure

12. Woo, *supra* note 7, at 576 (stating that an adoption decree becomes finalized when the court enters an adoption decree).

13. Rehoming is an informal process by which people devoid themselves of their adopted children by giving them away to someone else, often by advertisement via the internet. Twohey, *Underground Market*, *supra* note 4. See generally The Daily Nightly, *International Adoptions: Frequently Asked Questions*, NBC NEWS (Sept. 10, 2013, 6:21 PM), <http://nbcnews.com/news/other/international-adoptions-frequently-asked-questions-f8C11125986> [<https://perma.cc/8FZU-FH2A>] (discussing international adoptions and re-homing options).

14. See Destinee Roman, Comment, *Please Confirm Your Online Order: One Child Adopted From Overseas at No Cost*, 52 HOUS. L. REV. 1007, 1009 (2015) (referring to a notice sent by the Association of Administrators of the ICPC).

15. See *id.* at 1018.

16. *Id.*

17. *Id.* at 1008.

18. *Id.* at 1010, 1033.

19. See Roman, *supra* note 14, at 1010 (stating that children are protected from abuse and neglect under the adoption laws).

20. See *id.* at 1019-20; John M. Simmons, *Rehoming Is a Monstrous Act*, HUFFINGTON POST: THE BLOG (Sept. 18, 2013, 12:48 PM), http://www.huffingtonpost.com/john-m-simmons/rehoming-is-a-monstrous-act_b_3943583.html [<https://perma.cc/2Z3B-3USZ?type=image>].

21. See generally Paul A. Casi, II, Note, *Termination of Parental Rights*, 31 U. LOUISVILLE J. FAM. L. 1045, 1047-49 (1993) (discussing termination of parental rights and procedural due process).

22. See generally Chadwick N. Gardner, Note, *Don't Come Cryin' to Daddy! Emancipation of Minors: When Is a Parent 'Free at Last' From the Obligation of Child Support?*, 33 U. LOUISVILLE J. FAM. L. 927, 928-30 (1995) (reviewing the history behind the emancipation doctrine).

proper care, custody and welfare for rehomed children by requiring an administrative or judicial process. Even the states' agreement embodied in the Interstate Compact on the Placement of Children (ICPC)²³ requires tracking information and communication protocols between the states by sending agencies to the receiving agencies' jurisdiction.²⁴ While not judicial, the ICPC protocol employs a structure akin to administrative processes that can consider the child's best interest.²⁵ The ICPC does not specifically prohibit rehoming; however, this article sets forth arguments that rehoming parents do violate the ICPC.²⁶ Other state law has not directly prohibited the practice of rehoming or unregulated transfer of a child until recently.²⁷ Recent legislation was enacted in response to public outcry over the practice of rehoming, but these legal solutions fail to address the issue from a broad-based, preventative perspective.²⁸

This article argues that the same administrative or judicial process that protects children under established state law principles must also safeguard rehomed children. The states should be compelled to enact specific prohibition against the practice of rehoming. For instance, the adoption statutes should be expanded to require an administrative process where adopted children suffering from attachment disorders are identified and supported by specially staffed post adoption service agencies.

Since these disorders are often the bedrock of rehoming, this article highlights in Part II a rehoming anecdote involving severe attachment disorder of older adopted children. The anecdote's purpose is to bring attention to the psychological and emotional disorders plaguing re-

23. Kurtis A. Kemper, Annotation, *Construction and Application of Interstate Compact on the Placement of Children*, 5 A.L.R.6TH 193 (2005). The purpose of the ICPC is to monitor children who are transferred across state lines and facilitate cooperation among the states. See CAL. FAM. CODE § 7901 (West 2015).

24. *Id.*

25. Kemper, *supra* note 23, at 253.

26. See *infra* Part V.

27. Twohey, *Underground Market*, *supra* note 4.

28. See *infra* Part IV; Jordan, *supra* note 10, at 257. Rehoming cases may be prosecuted under an abandonment statute, but not all states are consistent on their definition of abandonment. *Id.* at 257.

homed children and the need for enactment of an administrative or judicial process that can identify and consider emotional disorders as an underlying cause of rehoming. Part III discusses the advent of technology as a contributor to rehoming. It emphasizes the need for the law to address the tragedy as an outgrowth of modern society where jurisdictional barriers do not exist across cyberspace. Part IV points out the failures of recent legislation which ignores the value of a legal process that ensures the best interest of the child. Part V discusses how rehoming violates the states' ICPC administrative tracking protocols, and how the protocols need to be extended to more directly protect adopted children who are transferred across state lines. Part VI argues that established state law should protect rehomed children through the judicial process as in parental termination and emancipation cases. It identifies how rehomed parents attempt to dissolve themselves of their obligations by ineffective operation of the power of attorney law. In order to prevent further use of this mechanism, the states must enact legislation that specifically prohibits parents from surrendering their parental rights over a child, adopted or otherwise, for a time period no longer than six months, without a judicial determination of the child's best interest. Moreover, Part VI asserts that children must also comply with a legal process to voluntarily divest themselves from their parents in emancipation proceedings. Finally, Part VII stresses the importance of constructing an administrative process for state post adoption service agencies to specifically identify and provide support for adoptive families struggling with attachment disorders. By addressing the prevalence of the emotional bonding issues confronting adopted children, the states can give hope to parents who resort to rehoming. This article opines that the rehomed child's best interest begins with the identification of underlying emotional and psychological disorders that otherwise might not be diagnosed without an administrative or judicially mandated avenue for assessment and treatment.

II. THE BEST OF INTENTIONS: A REHOMING ANECDOTE

In March 2015, Arkansas Representative Justin Harris was publicly ridiculed for having rehomed two of the three girls that he had adopted in 2013.²⁹ One of the girls was subsequently abused as a casualty of rehoming.³⁰ During a press conference, Justin Harris explained that he and his wife had struggled for a year to provide a home for the three girls.³¹ Rep. Harris placed blame on the Department of Human Services (DHS) claiming that despite what the media represents, “we were failed by DHS” after he and his wife reached out to DHS several times and were “met with nothing but hostility.”³² Rep. Harris was told by DHS and Court Appointed Special Advocates for Children (CASA)³³ that he had to adopt the older sister if he was to take the younger two.³⁴ Unfortunately, the couple was not told about the extensive abuse suffered by the oldest child resulting in a serious emotional disorder; nor were they told that the younger two children also had severe issues.³⁵ Rep. Harris stated that the oldest child was so disturbed from prior abuse that she spent eight hours a day screaming and in a fit of rage.³⁶

When the oldest girl did not improve after intensive therapy, she eventually attacked an unrelated two-year old in the head with a rock.³⁷ Later, they discovered that she had been hoarding sharp objects and metal rods under her bed.³⁸ In order to safeguard their biological children, the Harrises had them sleep in the couple’s room at night.³⁹ When the oldest girl was confronted, she disclosed that

29. Benjamin Hardy, *The Dispossessed*, ARK. TIMES, Mar. 12, 2015, at 14-15.

30. *Id.*

31. keeparkansaslegal, *Rep Justin Harris Says Arkansas DHS Forced Rehoming and Threatened Charges*, YOUTUBE (Mar. 6, 2015), <https://youtu.be/nXJ7J6l9lg>.

32. Hardy, *supra* note 29, at 18.

33. *What is CASA for Children?*, NAT’L CASA ASS’N: CASA FOR CHILDREN, <http://www.casaforchildren.org/site/c.mtJSJ7MPIS/E/b.5301295/k.BE9A/Home.htm> [<https://perma.cc/YVM6-GBV4>].

34. Hardy, *supra* note 29, at 18.

35. *Id.* at 16.

36. *Id.* at 17.

37. keeparkansaslegal, *supra* note 31.

38. *Id.*

39. Hardy, *supra* note 29, at 16.

she intended to kill the entire adoptive family.⁴⁰ Eventually, DHS placed the oldest girl with an inpatient care family and later in a foster care home.⁴¹ According to Rep. Justin Harris, DHS discouraged his wife and him from contacting the child⁴² so they proceeded to adopt just the two younger girls.⁴³ After one of the younger girls crushed the family pet to death,⁴⁴ the Harrises took both girls to several professionals who all recommended that the children be removed from the home.⁴⁵ Contrarily, the prior foster parents of the two youngest girls stated that neither of the children was dangerous.⁴⁶ In October 2013, the couple gave the two girls to Ms. Harris' friend Stacey Francis and Stacey's husband, Eric Francis.⁴⁷ Shortly thereafter, Eric Francis who worked at a preschool owned by the Harrises, sexually abused one of the girls.⁴⁸

The Harris's story exemplifies well-intended adoptive parents who were overconfident in their ability to safely and effectively care for their children.⁴⁹ Perhaps proper diagnosis of the girls' emotional disorders and long term support could have prevented the resulting harm of re-homing. Certainly, full disclosure of the girls' emotional problems⁵⁰ and long history of abuse might have better equipped them to handle the situation. Without reliable resources, many parents like the Harrises resort to the Internet.

40. keeparkansaslegal, *supra* note 31.

41. Hardy, *supra* note 29, at 17.

42. keeparkansaslegal, *supra* note 31.

43. *Id.*

44. Hardy, *supra* note 29, at 15.

45. *Id.*

46. *Id.* at 17.

47. Benjamin Hardy, *Above Reproach?*, ARK. TIMES, May 28, 2015, at 14-15.

48. *Id.* He is now serving time in prison for that crime as well as two other incidents involving sexual assault of children in his community. *Id.* The rehomed girls have since been adopted by a third family and Mr. Harris still maintains his position as a state representative. *Id.*

49. *Id.*

50. One significant reason behind adoption interruptions is that the adoptive parents were not made aware of the child's medical or social history. RICHARD P. BARTH & MARIANNE BERRY, ADOPTION AND DISRUPTION: RATES, RISKS, AND RESPONSES 108 (1988).

III. MODERN TECHNOLOGY FACILITATES REHOMING SANS LEGAL PROCESS

The Internet has birthed an underground market for adoptive parents to abandon their troubled, adopted children absent a formal legal process.⁵¹ When adoptive parents believe that they have no other recourse, the Internet is a vehicle for advertising and transferring unwanted children to strangers without government oversight or scrutiny.⁵² A Reuters reporter initiated an investigation into a massive database of over five-thousand postings from a single re-homing group over a five-year period of time.⁵³ An extensive report resulted that described the use of online message boarding as a tool for rehoming.⁵⁴ In the report, various anecdotes unveiled motivations behind rehoming and details of the process.⁵⁵ The report's message board investigation revealed not only how the Internet connected rehoming parents with interested couples, but also how the power of attorney documents were executed to grant temporary legal responsibility for the rehomed child.⁵⁶

One couple adopted a teenage girl from Liberia who "had been diagnosed with severe health and behavioral problems."⁵⁷ The couple posted an ad for her transfer on the Internet.⁵⁸ After only two days, another couple from Illinois responded to the ad.⁵⁹ Within a few weeks, the "handoff" of the teenager took place without an attorney and without child welfare officials.⁶⁰ The rehoming process is often swift, and here it involved only a notarized statement that declared the new couple guardians of the Liberian teenager.⁶¹ Sadly, what the rehoming parents did not know was that the state agency had removed the Illi-

51. Twohey, *Underground Market*, *supra* note 4.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. Twohey, *Underground Market*, *supra* note 4.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. Twohey, *Underground Market*, *supra* note 4.

nois couple's own children from their custody with authorities reporting that the "parents have severe psychiatric problems . . . with violent tendencies."⁶²

These internet-rehoming anecdotes describe the detrimental and fatal effect of our modern era on this social tragedy. It illustrates the hypocrisy of establishing strict laws that protect the best interest of natural born children while fully abandoning that of adopted children. Technological awareness may be fueling this tragedy, but the legal response surprisingly abandons the customarily utilized "best interest[] of the child" basis for addressing their needs.⁶³

IV. RECENT LEGISLATION IGNORES THE VALUE OF LEGAL PROCESS AND ITS ROLE IN ENSURING THE BEST INTEREST OF THE CHILD

Rehomed children qualify for the same safeguards of state law intervention applicable to children who appear in family court for custody or delinquency purposes. Unfortunately, the states have failed to directly address rehoming by implementing preventative measures or otherwise specifically deterring the practice.⁶⁴

When Reuters released its story regarding the disturbing dangers that children endure as a result of rehoming practices, "[eighteen] federal lawmakers called for a Congressional hearing on re-homing."⁶⁵ The United States Senate heard testimony on the issue and how parents can be prevented from transferring custody of their adopted

62. *Id.*

63. *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (holding that the father's due process rights were not violated by the application of the best interest of the child standard).

64. *Jordan*, *supra* note 10, at 243.

65. Megan Twohey, *U.S. Lawmakers Call for Action to Curb Internet Child Trading*, REUTERS (Oct. 29, 2013, 5:37 PM) [hereinafter Twohey, *Curbing Internet Child Trading*],

<http://www.reuters.com/article/us-adoption-react-idUSBRE99S1A320131029> [https://perma.cc/43RF-U7ZQ].

children to strangers met on the Internet.⁶⁶ Senator Ron Wyden of Oregon requested that the Obama administration encourage the states by recommending a “minimum federal standard”⁶⁷ to govern re-homing⁶⁸ since the states had not individually responded⁶⁹ and no uniform state law applied.⁷⁰

66. Megan Twohey, ‘Re-homing’ to Be Topic of U.S. Senate Hearing, REUTERS (July 7, 2014, 12:17 PM) [hereinafter Twohey, *Rehoming as Topic of Hearing*],

<http://www.reuters.com/article/us-usa-adoption-hearing-idUSKBN0FC1MA20140707> [<https://perma.cc/ZFZ9-DP6L>]. Rehoming bypasses government child welfare agencies when parents advertise their unwanted child online with the ultimate goal of transferring the child to a stranger with “nothing more than a notarized power of attorney.” *Id.*

67. Megan Twohey, *U.S. Lawmakers Call for Action to Stop Parents From Giving Away Kids Online*, REUTERS INVESTIGATES (Oct. 29, 2013) [hereinafter Twohey, *Calls for Action*], <http://www.reuters.com/investigates/adoption-follows/#article/part1> [<https://perma.cc/V99W-C46D>].

68. *Id.* Rehoming does not currently violate any federal laws.

69. *Id.* A proposal by executive director of North American Council on Adoptable Children, Joe Kroll, urges Congress to “place uniform restrictions on the advertising of children and require that all custody transfers of children to non-relatives be approved by a court.” Twohey, *Rehoming as Topic of Hearing*, *supra* note 67. Four states have recently passed laws that restrict advertising children or transferring custody but do not prohibit the activity outright. *Id.* Wisconsin, Colorado, Florida, and Ohio legislators have all responded to the Reuters investigation by enacting legislation in their own states regarding rehoming. Megan Twohey, *Wisconsin Passes Law to Stop the ‘Re-homing’ of Adopted Children*, HUFFINGTON POST (Apr. 18, 2014, 2:32 PM) [hereinafter *Wisconsin Passes Law*], http://www.huffingtonpost.com/2014/04/18/wisconsin-passes-rehoming-law_n_5174997.html [<https://perma.cc/EGV7-LDH8>]. Governor Scott Walker signed a Wisconsin law that limits custody transfers of children to someone that is not a relative of the adoptive parents without permission from a judge. *Id.* The law also makes it illegal to advertise a child that is over the age of one for adoption or a custody transfer. *Id.* People that violate the Wisconsin law may be punished by up to nine months in jail or up to a \$10,000 fine. *Id.* Louisiana Governor Bobby Jindal signed a bill into law that prohibits people from selling or giving away children that are unwanted without court approval. *Jindal Signs Law Banning Sale of Children*, THE ADVOCATE (June 20, 2014, 2:48 PM), http://www.theadvocate.com/baton_rouge/news/politics/article_f9cf5bc2-53b8-5f4a-9911-5eb0de30bc26.html [<https://perma.cc/Y6JS-AF5V>]. Senator Eleanor Sobel in Florida has proposed a bill that would make advertising a child for rehoming or adoption a felony. Sun Sentinel Editorial Bd., *Florida Should Crack Down on Illegal Re-adoptions*, SUN SENTINEL (Jan. 5, 2014), http://articles.sun-sentinel.com/2014-01-05/news/fl-editorial-rehoming-adopted-children-dv-20140105_1_child-abuse-adoption-florida-couple [<https://perma.cc/PD9X-E2ZL>]. Florida already has a law that prevents placement of a child in a different home absent a court order and a home study. Gina Jordan, *Florida Senate Panel Wants to Stop ‘Rehoming’ of Children*, WLRN (Dec. 17, 2013), <http://wlrn.org/post/florida-senate-panel-wants-stop-rehoming-children>

The states, therefore, must employ the best interest of the child determination as the law historically applied in assessing child custody.⁷¹ Application of the standard is appropriate in rehoming cases since the role of the state as *parens patriae*⁷² requires action to be taken to ensure the child's welfare.⁷³ This article argues that the law best addresses the abuses arising from rehoming by imposing the best interest of the child standard to operate administratively or judicially.⁷⁴ In doing so, the state actors can make recommendations such as behavioral treatment or temporary alternative placement as long as the best outcome for the child⁷⁵ is achieved. Also, note that final custody determinations or juvenile delinquency dispositions are made after due consideration of the child's wellbeing under the law. Likewise, parents who rehome must be required to submit potential transfer of custody to the same administrative or legal process so that troubled, adopted children receive the same protective treatment as their natural born counterparts.

V. REHOMING VIOLATES STATE LAWS THAT TRACK TRANSFER OF ADOPTED CHILDREN ACROSS STATE LINES

The practice of rehoming violates the spirit of enacted law regulating the transfer of children across state lines.

[<https://perma.cc/J9GU-GC72>]. Finally, Senator Charleta Tavares in Ohio is working on proposed legislation that would prohibit "mishandling of adopted children in Ohio." Danielle Elias, *Lawmaker Wants to Stop Abuse, Neglect to "Re-Homed" Adopted Children*, 10 TV (Mar. 25, 2014, 4:46 PM), <http://www.10tv.com/content/stories/2014/03/25/oh-rehoming-legislation.html> [<https://perma.cc/W4NL-KWBN>].

70. A uniform law is needed across the states to deter rehoming since some, not all, states criminalize abandonment. Jordan, *supra* note 10, at 257. Wisconsin was the first state to impose any type of law that prohibits rehoming. Twohey, *Wisconsin Passes Law*, *supra* note 70.

71. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976).

72. *Parens Patriae*, BLACK'S LAW DICTIONARY (10th ed. 2014).

73. *Holley*, 544 S.W.2d at 371–72.

74. Historically, the best interest of the child standard is implemented as part of a judicial process. TEX. FAM. CODE ANN. § 153.002 (1995).

75. *A Parent's Guide to Foster Care*, TEX. DEP'T OF FAM. & PROTECTIVE SERVS., https://www.dfps.state.tx.us/Child_Protection/State_Care/parents_guide_to_foster_care.asp [<https://perma.cc/A2KF-88NY>].

Expanding the pool of adoption-eligible children into other states involves cross-jurisdictional cooperation under the ICPC.⁷⁶ Each state in the United States, the District of Columbia, and the United States Virgin Islands are members of the ICPC⁷⁷ that was enacted because the states were unable to regulate the provision of services received by children in other states.⁷⁸ The ICPC requires that those

76. The ICPC is a Compact that protects adopted and foster care children that are transferred across state lines. AM. PUB. HUMAN SERVS. ASS'N, GUIDE TO THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN 2 (2002) [hereinafter GUIDE ON PLACEMENT OF CHILDREN], <http://www.childsworld.ca.gov/res/pdf/ICPCGuidebook.pdf> [<https://perma.cc/KC4U-HYNT>]. The Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC), established in 1974, was given the authority to carry out the rules and terms of the Compact more effectively. *Welcome to AAICPC Website*, ASS'N OF ADM'R OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, <http://www.aphsa.org/content/AAICPC/en/home.html> [<https://perma.cc/CPV2-3JSZ>].

77. Each state enacted the public law because the state social service agencies struggled with the gap in jurisdiction when placing children across state lines. GUIDE ON PLACEMENT OF CHILDREN, *supra* note 76. Enactment of the ICPC ensured continuity in the best interest of the child across state lines. *Id.* This Compact, first enacted by New York in 1960, requires that every state cooperate with each other regarding interstate placement of children. *Id.*; *see also ICPC Regulations: Regulation No. 3: Definitions*, ASS'N OF ADM'R OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, <http://www.aphsa.org/content/AAICPC/en/ICPCRegulations.html> [<https://perma.cc/WZ83-CZRL>]. It is a formal agreement between the states and is construed as state law. *In re Alexis O.*, 959 A.2d 176, 180 (N.H. 2008). The purpose of the ICPC is to facilitate the cooperation between states in the placement and monitoring of dependent children such that each child requiring placement shall receive “the maximum opportunity to be placed in a suitable environment” and “with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.” *In re Adoption No. 10087 in the Cir. Ct. for Montgomery Cty.*, 597 A.2d 456, 464 (Md. 1991). This case involved a private out of state adoption. *Id.* at 459. The natural mom in Virginia contacted the adoptive parents. *Id.* The natural parents of the child in question arranged an independent adoption, through an attorney, with adoptive parents who lived in Virginia. *Id.* The adoptive parents wished to keep their identities secret from the natural parents. *Id.* The adoptive parents failed to comply with Virginia's ICPC requirements by filing a form with their addresses and names. *In re Adoption No. 10087*, 597 A.2d at 460. The adoptive parents, without either state's consent from their ICPC offices, took custody of the child from the natural parents in Virginia and brought him to Maryland. *Id.* The lower court held that the placement was in violation of the ICPC. *Id.* at 464. In this case, because the parties did not comply with the ICPC, it constitutes grounds to revoke the parent's consent. *Id.* However, the court stipulates that just because the ICPC was violated it does not require a direct dismissal, but merely an assessment of the best interest of the child in question. *Id.* at 465.

78. Kemper, *supra* note 23, at 208.

who “send, bring or cause a child to be brought or sent” to another state must comply with its provisions.⁷⁹ However, it appears to minimally protect children⁸⁰ who are illegally transferred within the United States and those who are internationally transferred.⁸¹ This article asserts that the ICPC applies to rehoming parents who are a “sending agency”⁸² because they qualify as “[an]other entity having legal authority over a child who sends, brings, or causes to be sent or brought any child to another party state.”⁸³ As such, the ICPC guards against potential dangers that can

79. GUIDE ON PLACEMENT OF CHILDREN, *supra* note 76, at 3. The Compact covers adoptions, placements in licensed or approved foster homes, placements with parents and relatives when the parent is not making the placement, placement in group homes or residential placements. *Id.* The Compact does not cover placements in medical and mental health facilities, in boarding schools, in any institution that is educational in character. *Id.* Furthermore, the Compact does not cover a placement with a parent, step-parent, grandparent, adult brother, adult sister, adult uncle, adult aunt, or the child’s guardian. *Id.*

80. The law is inadequately enforced, and carries very nominal penalties. *Id.* at 6, 9.

81. Twohey, *Underground Market*, *supra* note 4.

82. A “sending agency” is defined as “a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity having legal authority over a child who sends, brings, or causes to be sent or brought any child to another party state.” *ICPC Regulations: Regulation No. 3: Definitions*, *supra* note 77. It may also include “a person,” therefore, the natural parents in this case should have complied with the ICPC requirements. *In re Adoption No. 10087 in the Cir. Ct. for Montgomery Cty.*, 597 A.2d 456, 461 (Md. 1991). The provision does not require compliance if the sending and receiving parties are related. *Id.* at 462.

83. *ICPC Regulations: Regulation No. 3: Definitions*, *supra* note 77. In a Missouri Supreme Court case, a biological mother was apprehensive about having a child born with special needs. *In re Baby Girl*, 850 S.W.2d 64, 66 (Mo. 1993) (en banc). Therefore, after the child was born, the mother arranged for a private adoption with a nursing supervisor named Michael. *Id.* A consent form was signed and notarized then Michael, the adoptive father, took the form and the child from Missouri to Arkansas. *Id.* The next day the adopting couple filed a petition to adopt the child in Arkansas. *Id.* The biological mother then wanted the child returned to her the next day. *Id.* The Missouri Supreme Court held that the ICPC applies when an adoption is arranged privately between a consenting natural parent and adopting parents as well as when adoption by an agency is involved, emphasizing that the ICPC defines the sending agency to include a person and that a natural parent falls within that definition. *In re Baby Girl*, 850 S.W.3d at 69. The court recognized that a few courts have suggested that the ICPC applies only when a public or private agency is involved, but found the applicability of the ICPC to private adoptions was supported by its legislative history, other courts, and the Secretariat coordinating the ICPC at a national level and furnishing advisory opinions to compact administrators. *Id.*

arise when there is inconsistency or lack of continuity of care over the child.⁸⁴ This means that rehoming parents transfer their adopted children outside the protections of the ICPC administrative structure.⁸⁵

For example, it provides opportunity for the sending agency to get home studies with an evaluation of the proposed placement.⁸⁶ That way, the sending agency does not lose jurisdiction over the child when the child moves out of the state.⁸⁷ And, the receiving state will know that all applicable laws are followed before the placement occurs. The ICPC also gives the sending agency the chance to regularly receive reports on the child's adjustment and progress in the placement.⁸⁸ In fact, the American Public Human Services Association (APHSA)⁸⁹ recently announced its support of proposed legislation that will facilitate information sharing across agencies through the creation of a web-based electronic case processing system.⁹⁰ This means that the ICPC and supporting administration of the law has created a structure for communicating and tracking children across state lines. Rehoming generates the same concerns that can be resolved upon implementation of an administrative process similar to the ICPC.

84. GUIDE ON PLACEMENT OF CHILDREN, *supra* note 76, at 3.

85. Transfers of adopted children across state lines is the more common instance where children benefit from the ICPC's regulatory structure that applies to private adoptions based on the ICPC legislative history, other courts, and the Secretariat coordinating the ICPC at a national level. Kemper, *supra* note 23, at 215.

86. *ICPC Regulations: Regulation No. 3: Definitions*, *supra* note 77.

87. *Id.*

88. *Id.*

89. The administrative agency, the American Public Human Services Association, is charged with promoting better lives for kids, adults, and families through supporting local and state agencies. *Mission & Vision*, AM. PUB. HUMAN SERVS. ASS'N,

http://www.aphsa.org/content/APHSA/en/the-association/MISSION_VISION.html [<https://perma.cc/A5J3-7GMJ>].

90. Federal congressional representatives introduced a bill, H.R. 4472, in February 2015 that will ease the states' exchange of electronic data and documents across state lines. Press Release, Am. Pub. Human Servs. Ass'n, Bill to Support Important APHSA Initiative Introduced in Congress (Feb. 4, 2015), <http://aphsa.org/content/dam/aphsa/pdfs/News/News%20Releases/H.R.%204472%20Press%20Release%20Final.pdf> [<https://perma.cc/5TDP-UQWP>]. The bill was referred to Committee on Feb 4, 2016. *H.R. 4472: Modernizing the Interstate Placement of Children in Foster Care Act*, GOVTRACK, <https://www.govtrack.us/congress/bills/114/hr4472> [<https://perma.cc/FHW8-USH5>].

The courts' interpretation of the ICPC, likewise, supports extension of the law to rehoming parents as sending agents.⁹¹ A North Carolina court illuminates the scope and intent of ICPC when it held that birth parents retained jurisdiction over the child⁹² and were responsible for the child's return to their state and for all custody matters.⁹³ Just as birth parents or legally designated persons are held responsible for placement of children when transferred to another legally sanctioned person under the ICPC,⁹⁴ state law should require a process where the law ensures the continuity of care and placement of all children in rehoming cases or other unfavorable arrangements. If the ICPC is written to effect proper responsibility over a child's welfare, then the states must specifically continue the protections for all children whether adopted or transferred via rehoming.

While more recent case law did not apply the ICPC to a neglectful natural mother citing ICPC history as relevant to adoptions only,⁹⁵ the law clearly regulates tracking in-

91. *In re Adoption No. 10087 in Cir. Ct. for Montgomery Cty.*, 597 A.2d 456, 463 (Md. 1991). The case supports how the ICPC policies and provisions apply to rehoming because parents were interpreted as a "person" under the statute. *Id.* at 461-62.

92. Article V of the ICPC provided that the "sending agency" must retain jurisdiction over the child sufficient to determine all matters in relation to the child's custody. *Oktibbeha Cty. Dep't of Human Servs. v. N.G.*, 782 So. 2d 1226, 1232 (Miss. 2001). After the child's mother was incarcerated, the trial court, without a hearing, sent the child to live with relatives from another state. *Id.* at 1227. The incarcerated mother then filed a complaint for custody of the child and a writ of habeas corpus to get the child back to the home state. *Id.* The court found that the "sending agency" has exclusive jurisdiction over a child to determine all matters of custody. *Id.* at 1232.

93. *Stancil v. Brock*, 425 S.E.2d 446, 449 (N.C. Ct. App. 1993). A North Carolina court held that birth parents were a "sending agency" under the ICPC who retained jurisdiction and responsibility over the child's custody matters. *Id.* at 450. The birth parents of a child born in Kentucky decided to give their child up for adoption to a couple in North Carolina. *Id.* at 447. The adoption was in accordance with ICPC because the birth parents were the ones who sent the child as a "sending agency." *Id.* at 449-50.

94. *Id.*

95. *In re Alexis O.*, 959 A.2d 176, 178 (N.H. 2008). A mother appeals the decision of the trial court that applied ICPC to its decision not to allow her to return to Arizona from New Hampshire until Arizona authorities notified New Hampshire Division for Children Youth and Families. *Id.* The ICPC did not apply to the trial court's decision to transfer a child to her mother after the mother was found not to

formation across jurisdictional lines.⁹⁶ The courts have interpreted the law broadly to incorporate situations where one responsible parent or guardian must make decisions about placement of a dependent child.⁹⁷ Without regard to the persons involved, the law specifically provides for communication across state agencies to prevent individuals who would not have the authority to transfer the child in violation of parental rights or in opposition to the best interest.⁹⁸ Some provisions of the ICPC may limit the scope of application to foster care or preliminary adoption⁹⁹ but require that procedures¹⁰⁰ regarding these “substitutes” for parental care be followed before the child is sent across jurisdictional lines.¹⁰¹ Rehoming parents, likewise, make arrangements for care and placement when they contact individuals to whom they transfer custody and confirm transfer of the child.¹⁰² Accordingly, the ICPC policy and law can extend to the problems of rehoming since the adoptive parents are a “sending state agency”¹⁰³ that must minimally ensure the safety and welfare of the child.¹⁰⁴ Merely arranging for the transfer of legal decision-making rights under execution of a power of attorney does not accomplish this goal.

have been neglectful. *Id.* at 179. The court found that the drafters of the ICPC did not intend for it to govern natural parents. *Id.* at 183.

96. *Id.* at 181.

97. *Id.* at 180-81.

98. Memorandum of Understanding between Interstate Comm'n for Juveniles & Ass'n for Admin. of the Interstate Compact on the Placement of Children (May 21, 2012),

<http://www.aphsa.org/content/dam/AAICPC/PDF%20DOC/Home%20page/AAICPC-ICJ-MOU.pdf> [<https://perma.cc/9M92-MZWJ>].

99. *In re Alexis O.*, 959 A.2d at 182.

100. *Id.* at 181.

101. *Id.* at 182.

102. *Id.* at 181. In this case, the court's interpretation of ICPC supports extending the law to protect rehomed children because it highlights its purpose, which is the protection of children. *Id.*

103. *Stancil v. Brock*, 425 S.E.2d 446, 449 (N.C. Ct. App. 1993). The adoption was in accordance with ICPC because the birth parents were the ones who sent the child as a “sending agency.” *Id.* at 450.

104. The ICPC requires that “no sending agency shall send, bring, or cause to be sent or brought into any other party state any child” unless that state complies with the requirements of the ICPC and the laws of the receiving state. *In re Adoption No. 10087* in Cir. Ct. for Montgomery Cty., 597 A.2d 456, 461 (Md. 1991).

VI. WELL ESTABLISHED STATE LAWS MANDATE THAT JUDICIAL OR ADMINISTRATIVE PROCESS EXTEND TO REHOMED CHILDREN

A. Rehoming Parents Attempt to Terminate their Parental Rights by Executing a Power of Attorney that Skirts Legal Process

Rehoming parents attempt to ineffectively terminate parental responsibility by temporarily delegating authority over the child's care. Regardless, they remain legally responsible for the care and custody of their children.¹⁰⁵ Their responsibility outgrows from the rights that are afforded them under the U. S. Constitution¹⁰⁶ to make the decisions that consider the best interest of the child. Contrarily, when parents jeopardize the welfare of their children,¹⁰⁷ the state assumes the role as *parens patriae*¹⁰⁸ to make decisions for the child. If the state seeks termination of the parent's rights,¹⁰⁹ then the law must afford them due process.¹¹⁰ Similarly, even if parents voluntarily seek to terminate their parental rights, they must petition the courts whereby the judge determines the child's best in-

105. *In re Adoption of O.L.P.*, 41 P.3d 999, 1001-02 (Okla. Civ. App. 2001). The mother of the child in question undertook no parental responsibilities and expressed no intent or wish to form a relationship with the child until her arrest and conviction of a robbery. *Id.* Yet, she was still responsible until the parent-child relationship was terminated and the grandmother of the child was allowed to adopt the child. *Id.*

106. See *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000).

107. In Texas, the court can terminate the parent-child relationship if the court determines that the parent has voluntarily left the child with someone for six months and has not provided support for that child or if the parent simply left the child without the intent to return. TEX. FAM. CODE ANN. §161.001(b)(1)(C) (West 2015). Furthermore, the court may terminate parental rights if the parent knowingly places a child in an environment that endangers the child's emotional and physical wellbeing and allows the child to remain there. TEX. FAM. CODE ANN. §161.001(b)(1)(D) (West 2015). To voluntarily relinquish parental rights, an affidavit must be signed after the child is born, verified by two witnesses and verified before one authorized to take oaths. TEX. FAM. CODE ANN. §161.103 (West 2015).

108. *Snapp & Son, Inc. v. P.R.*, 458 U.S. 592, 600 (1982).

109. Courts may terminate the rights of a parent if the parent becomes incarcerated for a felony, abandons the child, abuses and tortures the child, has a mental illness, or has excessive use of drugs or alcohol. ALA. CODE § 12-15-319(a)(1)-(4) (2015).

110. *Santosky v. Kramer*, 455 U.S. 745, 769 (1982). When process is afforded, a parent is entitled to representation by counsel in some states. CONN. GEN. STAT. ANN. § 45a-717(a)-(d) (2016).

terest.¹¹¹ However, rehoming transfers the child without undertaking a best interest determination made through legal process¹¹² just as the law requires whether divestiture of parental responsibility¹¹³ is sought voluntarily or not.

To skirt the process, rehoming parents execute power of attorney documents granting temporary legal rights upon transfer of the child to another adult¹¹⁴ under statutorily

111. *In re Adoption of O.L.P.*, 41 P.3d at 1001-02 (Okla. Civ. App. 2001). The court's determination is made not only after a hearing considering the consent agreement, but also the best interest of the child. *Id.* at 1002. In many proceedings regarding the termination of parental rights, the judge applies the best interests of the child standard. ALASKA STAT. ANN. § 47.10.088(b) (West 2016).

112. Most states have a section of their code dedicated to parental termination and the process by which to complete termination of parental rights. See, e.g., ALA. CODE § 12-15-319 (1975); ALASKA STAT. ANN. § 47-10-089 (2016); ARIZ. REV. STAT. ANN. § 8-533 (2014); ARK. CODE ANN. § 9-27-341 (2013); CAL. FAM. CODE. § 7802 (West 1994); COLO. REV. STAT. ANN. § 19-5-109 (West 2014); CONN. GEN. STAT. ANN. § 45a-715 (West 2015); D.C. CODE ANN. § 16-2326.01 (West 2009); FLA. STAT. ANN. § 39.801 (West 1999); GA. CODE ANN. § 15-11-310 (West 2014); HAW. REV. STAT. ANN. § 571-61 (West 2013); IDAHO CODE ANN. § 16-1624 (West 2013); 20 ILL. COMP. STAT. ANN. 505/35.2 (West 1989); IND. CODE ANN. § 31-35-1-4 (West 2012) (may require the parent to formulate a plan of care or treatment for the child prior to termination); IOWA CODE ANN. § 232.117 (West 2001); KY. REV. STAT. ANN. § 625.090 (West 2012); ME. REV. STAT. ANN. tit. 22, § 4055 (2015); MINN. STAT. ANN. § 260C.301 (West 2013); MISS. CODE ANN. § 93-15-109 (West 2016); MO. ANN. STAT. § 211.447 (West 2014); NEB. REV. STAT. ANN. § 43-292 (West 2009); NEV. REV. STAT. ANN. § 128.105 (West 2001); N.H. REV. STAT. ANN. § 170-C:5 (2016); N.J. STAT. ANN. § 30:4C-15.1 (West 2015); N.M. STAT. ANN. § 32A-4-28 (West 2005); N.Y. DOM. REL. LAW § 124 (McKinney 1992); N.D. CENT. CODE ANN. § 27-20-44 (West 2007); OHIO REV. CODE ANN. § 3109.04 (West 2011); OKLA. STAT. ANN. tit. 10A, § 1-4-906 (West 2009); 23 PA. STAT. AND CONS. STAT. ANN. § 2521 (West 1981); 15 R.I. GEN. LAWS ANN. § 15-7-7 (West 1956); S.C. CODE ANN. § 63-7-1710 (2014); S.D. CODIFIED LAWS § 25-5A-3 (1973); TENN. CODE ANN. § 36-1-113 (West 2015); UTAH CODE ANN. § 78A-6-316 (West 2008); VA. CODE ANN. § 16.1-283 (West 2012); WASH. REV. CODE ANN. § 13.34.145 (West 2015); W. VA. CODE ANN. § 49-4-607 (West 2015); WIS. STAT. ANN. § 48.41 (West 2009).

113. Ashley L. Driver, Comment, *Confusing Plain Language: The Compelling but Counterintuitive Need for Adoption by a Biological Parent*, 63 ARK. L. REV. 139, 154 (2010) (discussing the courts termination of parental rights).

114. Twohey, *Underground Market*, *supra* note 4. In most states, the law regulating power of attorney may place time restrictions on the period for which the power of attorney is effective. Arizona, Michigan, Nebraska, New Mexico, and Utah's statutes only allow a power of attorney for a child to last six months. See ARIZ. REV. STAT. ANN. § 14-5104 (1974); MICH. COMP. LAWS ANN. § 700.5103 (West 2004); NEB. REV. STAT. ANN. § 30-2604 (West 2010); N.M. STAT. ANN. § 45-5-104 (West 2009); UTAH CODE ANN. § 75-5-103 (West 1953). Maine, Minnesota, Missouri, and Oklahoma's statutes only allow power of attorney for a child to last one year. See ME. REV. STAT. ANN. tit. 18-A, § 5-104 (1981); MINN. STAT. ANN. §

constructed circumstances—none of which include “rehoming.”¹¹⁵ State jurisdictional case law establishes limitations on the power of attorney in cases where the document is used for purposes contrary to its intent.¹¹⁶ Rehoming parents misuse power of attorney in a manner contrary to its intent when they seemingly divest¹¹⁷ them-

524.5-211 (West 2003); MO. ANN. STAT. § 475.024 (West 1983). The intent for transfer of decision-making authority is ordinarily for temporary periods of time when the parent is unavailable for some reason, and not for an indefinite time. A power of attorney permits a person to act on the parent's behalf when making choices for a child. Mike Broemmel, *Power of Attorney for Child Care & Custody*, LIVE STRONG (Aug. 1, 2010), <http://www.livestrong.com/article/191293-power-of-attorney-for-child-care-custody/> [<https://perma.cc/362H-23XV>]. Ohio's power of attorney for a child requires that the parent be “(a) Seriously ill, incarcerated, or about to be incarcerated; (b) Temporarily unable to provide financial support or parental guidance to the child; (c) Temporarily unable to provide adequate care and supervision of the child because of the parent's, guardian's, or custodian's physical or mental condition; (d) Homeless or without a residence because the current residence is destroyed or otherwise uninhabitable; or (e) In or about to enter a residential treatment program for substance abuse.” OHIO REV. CODE ANN. § 3109.53 (West 2013). Georgia's statute regarding the power of attorney for a minor child requires that both parents, or the parent with sole permanent legal custody, executes the power of attorney and that they specify the hardship that prevents them from caring for the child. GA. CODE ANN. § 19-9-127 (West 2010). District of Columbia's statute regarding childcare allows a parent to grant their rights and responsibilities to another including the right to enroll the child in school and make medical decisions for the child. D.C. CODE ANN. § 21-2301 (West 2007).

115. Twohey, *Underground Market*, *supra* note 4.

116. In one case, the father of several children who executed a power of attorney delegated his parental authority to his sister. *In re Martin*, 602 N.W.2d 630, 631 (Mich. Ct. App. 1999). At the time that the power of attorney was executed, the father was incarcerated and the mother was deceased. *Id.* The power of attorney that was executed did not address the children's long-term needs. *Id.* Therefore, a guardianship proceeding was required to make sure decisions regarding the well-being of the children were being made in their best interests. *Id.* The court found that the execution of the power of attorney did not divest the probate court of its right to jurisdiction in guardianship proceedings. *Id.* According to Michigan's statute, a power of attorney is revocable at the will of the party that executed it and is only effective for six months. *In re Martin*, 602 N.W.2d at 632. When the power of attorney expires, the person that had custody of the child no longer “has legal power, authority, or obligation with regard to the welfare of the child.” *Id.* However, if a person is actually appointed as a guardian, they have the same responsibilities as a parent and “must ‘facilitate the ward's education and social or other activities, and shall authorize medical or other professional care, treatment, or advice.’” *Id.*

117. The power of attorney is viewed by the court as a delegation rather than a relinquishment of parental rights or responsibilities. *In re Richard P.*, 708 S.E.2d 479, 488 (W. Va. 2010) (noting that the mother chose to retain her rights, and the court viewed the power of attorney as a means of doing so, while having the effect of giving the boyfriend guardianship).

selves of legal responsibility for the child without the legal process required like when there is formal termination of parental rights. When the custody of a child is at issue and the parents' rights have not been terminated, then guardianship proceedings may be appropriate.¹¹⁸ In essence, the power of attorney documents do not have the legal effect that the rehoming parent intends.¹¹⁹ Absent a formal hearing that terminates parental rights over the care and custody of the child¹²⁰ or assignment of guardianship to another adult,¹²¹ the states must regulate the transfer of children to adults who are not their parents for indefinite periods of time without court intervention. Even when a natural mother who has retained visitation and parental rights in the child leaves the adoptive parents with custody under a power of attorney for an indefinite time, the adoptive parents are required to file for termination of the mother's rights before they can refuse to return the child to his natural mother.¹²²

The law negates application of a power of attorney as a means of abdicating parental responsibility indefinitely. For these reasons, the states should specifically impose legal responsibility on adults who misuse the law for rehoming purposes. Just as state statutes regulate endangerment, abuse, and abandonment of children, the power of attorney statutes should be amended to prohibit their use as a means of indefinite transfer of adopted children.

118. *Id.* at 485.

119. Twohey, *Underground Market*, *supra* note 4.

120. Courts recognize parental responsibility in traditional and non-traditional role assumption. See Melanie B. Jacobs, *Why Just Two? Disaggregating Traditional Parental Rights and Responsibilities to Recognize Multiple Parents*, 9 J.L. & FAM. STUD. 309, 313 (2007) (arguing for a broad view of parenthood to encompass more than one individual to assume the roles and responsibilities of parenthood so that ultimately the child will benefit).

121. See generally Joyce E. McConnell, *Securing the Care of Children in Diverse Families: Building on Trends in Guardianship Reform*, 10 YALE J.L. & FEMINISM 29, 32-45 (1998) (discussing the authority and rights of biological and adoptive parents).

122. See *In re Adoption of John Doe*, 648 P.2d 798, 800 (N.M. Ct. App. 1982). The court found that based upon the best interest of the child and public policy, the natural mother's parental rights should be terminated. *Id.* at 804-05. In this case, the biological mother had left her son with the father for several years. *Id.* at 801. She later decided, once she had remarried and had other children, to take the child without the father's knowledge to a different state. *Id.*

Likewise, when rehoming parents seek a means of transferring custody of their children, the states' laws should minimally require a process that is commensurate with the magnitude of assuming parental rights.¹²³ Relinquishing those rights to anyone indefinitely should therefore require the same, if not greater, depth of process.

B. Even Children Who Voluntarily Seek to Become Emancipated Must Comply with a Legal Process that Ensures their Best Interest

The practice of rehoming violates a long-standing history of a legal process that is reflected in not only the termination of parental rights, but also under the emancipation law.¹²⁴ Because parental rights are constitutionally protected,¹²⁵ the law requires even children who request severance from their parents to participate in some form of legal process.¹²⁶ Process protects the rights of the parents while also determining the best interest of the

123. Parental rights are constitutionally protected under the law. The courts must rightfully provide due process for parents before absolving them of legal responsibility. See *Troxel v. Granville*, 530 U.S. 57, 72-73 (2000); *The Supreme Court's Parental Rights Doctrine*, PARENTALRIGHTS.ORG, <http://www.parentalrights.org/index.asp?SEC=%7B3051ABFF-B614-46E4-A2FB-0561A425335A%7D> [<https://perma.cc/MWK6-LYPL>].

124. All states regulate the child's request for emancipation from the parent. *Emancipation of Minors*, CORNELL UNIV. LAW SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/emancipation_of_minors#_Vh8Kb-tN3zJ [<https://perma.cc/C375-RPBJ>]. Generally, statutory law provides various factors pertinent to the child's self-sustainability in their physical care and support. *Id.* If the statute does not separately enumerate factors, then judges apply common law cases. *Id.*; see also *In re Marriage Baumgartner*, 930 N.E.2d 1024, 1032-33 (Ill. 2010) (noting a minor's ability to support themselves economically and physically). Some state statutes require the court to take into account the wishes of the parent or legal guardian. See ARK. CODE ANN. § 9-27-362(d)(2) (West 2015); NEV. REV. STAT. ANN. § 129.120(4)(a) (West 2015).

125. See *Hodgson v. Minnesota*, 497 U.S. 417, 447-48 (1990).

126. See *Emancipation of Minors*, *supra* note 124. "Emancipation is a term that generally describes the transition from 'minor' to 'adult' in which the child becomes free from parental control, and the parents are no longer legally responsible for the acts of the child. An emancipated person may legally sign binding contracts; marry without parental permission; give medical consent; and enjoy the many other manners of social, legal and financial benefits and obligations of an adult. Depending on the state and other considerations, emancipation usually occurs at the age of 18." *Child Emancipation*, CHILDREN'S RIGHTS COUNCIL, <http://www.crckids.org/child-support/child-emancipation/> [<https://perma.cc/2ARZ-L58B>].

child.¹²⁷ Consequently, if a child desires to make decisions regarding his own wellbeing, then the law requires that the minor seek emancipation through a formal process.¹²⁸

Generally, emancipation is the power granted upon filing of a petition¹²⁹ to a minor for control over his own care, thereby divesting the parents from legal responsibility.¹³⁰ The court must assess whether the minor is truly able to care for himself before the court can grant him authority that, in effect, dissolves the parents' responsibility to do the same.¹³¹ Most notably, the law provides a process¹³²

127. The courts must consider whether the minor is able to support himself economically and physically in making emancipation determinations. See *In re Marriage Baumgartner*, 930 N.E.2d 1024, 1034 (Ill. 2010). Some statutes focus on whether the child's best interests are served by allowing emancipation despite whether a parent or guardian objects. See GA. CODE ANN. § 15-11-725(a)(1) (West 2014). Regardless, the emancipation may not be granted if the minor, parent, or guardian objects to it. See 750 ILL. COMP. STAT. ANN. 30/9(a) (West 2015).

128. See John C. Polifka, *The Status of Emancipated Minors in Iowa: The Case for a Clearly Drafted Statute*, 44 DRAKE L. REV. 39, 48-49 (1995) (discussing the emancipation process as necessarily considering the best interest of the minor).

129. In most instances, a petitioner must file a petition for emancipation with a county or a probate court, as these courts have jurisdiction over matters concerning juveniles and children. A petition of emancipation must be accompanied by evidence of surrounding circumstances and conduct demonstrated by parents, minors or both, that contradicts and invalidates the common legal understanding that exists with regard to the rights and responsibilities of parents to children and vice-versa. Emancipation statutes and common law regulate the legal basis upon which such cases are decided. See, e.g., COLO. REV. STAT. ANN. § 19-1-103 (West 2015); CONN. GEN. STAT. ANN. § 46b-150 (West 2007); FLA. STAT. ANN. § 743.01 (West 1997); HAW. REV. STAT. ANN. § 577-25 (West 1976); 750 ILL. COMP. STAT. ANN. 30/9 (West 2003); KAN. STAT. ANN. § 38-108 (West 1923); LA. CIV. CODE ANN. art. 365 (2009); MICH. COMP. LAWS ANN. § 722.4 (West 1999); MONT. CODE ANN. § 41-1-501 (West 2009); NEV. REV. STAT. ANN. § 129.080 (West 2004); N.M. STAT. ANN. § 32A-21-7 (West 1995); N.C. GEN. STAT. ANN. § 7B-3505 (West 1979); OR. REV. STAT. ANN. § 419B.552 (West 2015); 14 R.I. GEN. LAWS ANN. 14-1-59.1 (West 1956); S.D. CODIFIED LAWS § 25-5-26 (1991); VA. CODE ANN. § 16.1-331 (West 1986); VT. STAT. ANN. tit. 12, § 7155 (West 2010); WASH. REV. CODE ANN. § 13.64.050 (West 1993); W. VA. CODE ANN. § 49-4-114 (West 2015); WYO. STAT. ANN. § 14-1-203 (West 1996).

130. "The legal obligation to pay child support ends with the emancipation of the child." *Child Emancipation*, *supra* note 129.

131. Other factors include whether the minor has voluntarily left his parent's home and whether the minor has demonstrated his ability to assume responsibility for his own care, or instead, whether he still needs support. *In re Marriage Baumgartner*, 930 N.E.2d 1024, 1034 (Ill. 2010).

132. See Gardner, *supra* note 22, at 930-33 (outlining emancipation of a minor by operation of statutory factors with or without a judicial hearing).

where the child's care and custody is central to the absolution of parental responsibility¹³³ before granting emancipated status.

Just like the state courts implement a process for considering the best interest of the child in response to emancipation petitions, the states must regulate rehoming by proscribing a legal process that assesses the people and environment in which the child is being transferred.

VII. REHOMING BARS OPPORTUNITY FOR BEST INTEREST DETERMINATIONS OF POST ADOPTION SERVICES THAT SPECIFICALLY ADDRESS BONDING DISORDERS

Rehoming has become a self-help remedy for adoptive parents who can no longer manage the care and custody of their adopted children.¹³⁴ These children are frequently unable to attach and bond with their new families because they feel neglected and abandoned after enduring placements and removals into multiple foster

133. The emancipation process allows the courts to consider if the parent is fully released from all parental obligations or if child support is indicated. *Id.* at 934.

134. Michelle Lillie, *Rehoming Adopted Children*, HUMAN TRAFFICKING SEARCH, <http://humantraffickingsearch.net/wp1/rehoming-adopted-children/> [<https://perma.cc/K22N-LUTD>]. The majority of rehomed children are adoptees from foreign countries who are placed with American families. *Id.* The children oftentimes do not speak English and/or have complex behavioral issues that require extensive mental health interventions post adoption. See C.W. Williams, *Children "Rehomed" on Internet Message Boards*, POLITICAL MOLL (Mar. 28, 2014, 9:29 PM), <http://politicalmoll.com/children-rehomed-internet-message-boards/> [<https://perma.cc/6BJE-8UNL>]. Some countries such as China and Guatemala have closed or restricted their guidelines for international adoption in response to reports of neglect. Emily Matchar, *Broken Adoptions: When Parents "Re-Home" Adopted Children*, TIME (Sept. 20, 2013), <http://ideas.time.com/2013/09/20/broken-adoptions-when-parents-re-home-adopted-children/> [<https://perma.cc/V33J-CR2V>]. In fact, Moscow lawmakers have banned Americans from further adoptions of Russian children after instances of neglect by American adoptive parents. Madison Park, *Russia's Lower House Approves Bill to Ban U.S. Adoption*, CNN (Dec. 27, 2012, 12:29 PM), <http://www.cnn.com/2012/12/21/world/europe/russia-us-adoption-ban/index.html> [<https://perma.cc/8STK-NMR9>]. One Russian child died while in the care of an American family, and another adoptive family sent her seven-year old adopted son back to Russia alone on a plane. *Id.* Consequently, many adoptive parents are faced with adopting children who, while more available, are older, disabled, or emotionally disturbed children. Lillie, *supra* note 134.

homes.¹³⁵ Numerous placements prevent adopted children from experiencing the care and attention needed to form trusting relationships.¹³⁶ Consequently, attachment disorder¹³⁷ befalls the deprived child who has endured multiple or violent caretakers. The adoptive parents believe that rehoming is their only option¹³⁸ especially since there was no way for them to anticipate the adopted child's level of attachment disorder.¹³⁹ Rehoming pre-

135. Bruce D. Perry, *Bonding and Attachment in Maltreated Children*, THE CHILDHOOD TRAUMA ACAD., https://childtrauma.org/wp-content/uploads/2013/11/Bonding_13.pdf [<https://perma.cc/7DK4-ZQQC>]; see also L. ANNE BABB & RITA LAWS, *ADOPTING AND ADVOCATING FOR THE SPECIAL NEEDS CHILD: A GUIDE FOR PARENTS AND PROFESSIONALS* 2-3 (1997). Abused adoptive children suffer from Post-Traumatic Stress Disorder (PTSD) if they remain affected by abuse or neglect for more than one month. TRISH MASKEW, *OUR OWN: ADOPTION AND PARENTING THE OLDER CHILD* 226 (1999). PTSD causes a child to experience dramatic flashbacks and inability to share their experiences. *Id.* Additionally, the federal government encourages the states to expand post adoption services to international adoptions. CHILD WELFARE INFO. GATEWAY, *INTERCOUNTRY ADOPTION FROM HAGUE CONVENTION AND NON-HAGUE CONVENTION COUNTRIES FACTSHEET 7* (2014), <https://www.childwelfare.gov/pubs/factsheets/hague/> [<https://perma.cc/7DK4-ZQQC>].

136. MASKEW, *supra* note 135, at 208-09. Children that are adopted at older than one-year old tend to experience even greater levels of attachment disorder because they are not able to learn to trust or form a secure relationship. Marinus H. van IJzendoorn & Femmie Juffer, *The Emanuel Miller Memorial Lecture 2006: Adoption as Intervention: Meta-analytic Evidence for Massive Catch-up and Plasticity in Physical, Socio-emotional, and Cognitive Development*, 47 J. CHILD PSYCHOL. & PSYCHIATRY 1228, 1235 (2006). An additional issue that can create problems for an adopted child involves the child and the adoptive parent's race. Ruth-Arlene W. Howe, *Race Matters in Adoption*, 42 FAM. L.Q. 465, 469 (2008).

137. BRENDA MCCREIGHT, *ATTACHMENT DISORDER AND THE ADOPTIVE FAMILY* 1-2, <http://theadoptioncounselor.com/pdf/Attachment%20pamphlet.pdf> [<https://perma.cc/N8F6-G93Q>]. Attachment disorder is a long-term psychiatric condition that is prevalent among children adopted at an older age. *Id.* at 1. It stems from insufficient brain development where children display a series of negative type behaviors. *Id.* "The result is a child who only knows how to survive by manipulation, by control, by aggression, or by withdrawal." *Id.* at 2. Genetic tendencies, pre-natal exposure to drugs or alcohol influence the degree of attachment disorder. *Id.* at 3.

138. In regard to his newly adopted son, a Wisconsin adoptive father states, "We didn't have the slightest idea of what we were getting ourselves into and every school or social service agency basically told us we were on our own." Matchar, *supra* note 134. An executive director at the Evan B. Donaldson Adoption Institute, Adam Pertman, stated that services after the adoption is finalized are "shamefully inadequate." *Id.* He stated that most mental professionals are not trained in adoption and attachment issues. *Id.* As a result, even if adoptive parents that are having problems seek help they will not find adequate assistance. *Id.*

139. MCCREIGHT, *supra* note 137, at 5.

vents proper diagnosis¹⁴⁰ and any avenue for potential services¹⁴¹ that can treat the emotional or behavioral issues.¹⁴² Instead, adoptive parents resort to remedies that are outside the bounds of legal process for determining proper services¹⁴³ or even alternative placement. It is cru-

140. Most caseworkers are not mental health professionals with education or training that relates to child welfare and development. Dawn J. Post & Brian Zimmerman, *The Revolving Doors of Family Court: Confronting Broken Adoptions*, 40 CAP. U. L. REV. 437, 489-90 (2012). Courts and practitioners collaborate to make important decisions regarding a child's placement, but it is sometimes based upon the inadequate psychological assessments performed by non-mental health professionals. *Id.* at 490.

141. Since the adoptive parents are ill equipped to handle these issues, dissolutions occur. See Williams, *supra* note 134. A study on the need for post-adoption services revealed that adoptive families that receive post-adoption services are less likely to have failed adoptions. CHILD WELFARE INFO. GATEWAY, PROVIDING POSTADOPTION SERVICES 4-5 (2012), https://www.childwelfare.gov/pubPDFs/f_postadoptbulletin.pdf [<https://perma.cc/53ZN-BUFR>].

142. A study showed that through stability and continuity in the home environment the adopted child's attachment issues improved. C.S. Pace & G.C. Zavattini, *'Adoption and Attachment Theory' the Attachment Models of Adoptive Mothers and the Revision of Attachment Patterns of Their Late-Adopted Children*, 37 CHILD: CARE, HEALTH & DEV. 82, 86 (2010).

143. Most states do not specifically provide post adoption services after finalization to support their transition to the adopted family. Some states will merely address post adoption visitation of natural parents, grandparents, or siblings. The statutes may provide for contact with the adopted child as support during transitional periods or even long-term ties between siblings, the nature of in-depth behavioral and psychological support needed to address ongoing issues needs to be specifically provided for under the law. See, e.g., ALA. CODE § 26-10A-30 (1975); ALASKA STAT. ANN. § 25.23.130 (2014); COLO. REV. STAT. ANN. § 19-5-304 (West 2014); D.C. CODE ANN. § 4-361 (West 2010); GA. CODE ANN. § 19-8-27 (West 2013); IND. CODE ANN. § 31-19-16-1 (West 1997); IOWA CODE ANN. § 232.108 (West 2014); LA. CHILD. CODE ANN. art. 1269.2 (2011); MD. CODE ANN., FAM. LAW § 5-3A-08 (West 2006); MASS. GEN. LAWS ANN. ch. 210, § 6c (West 2008); MISS. CODE ANN. § 93-17-13 (West 2014); MONT. CODE ANN. § 40-4-212 (West 2009); N.H. REV. STAT. ANN. § 170-B:2 (2006); N.J. STAT. ANN. § 30:4C-15 (West 2004); N.Y. DOM. REL. LAW § 112-b (McKinney 2015); N.D. CENT. CODE ANN. § 14-09.1-01 (West 2015); OHIO REV. CODE ANN. § 3107.15 (West 1996); OKLA. STAT. ANN. tit. 10A, § 1-4-813 (West 2009); OR. REV. STAT. ANN. § 109.305 (West 2008); 23 PA. STAT. AND CONS. STAT. ANN. § 2731 (West 2010); 15 R.I. GEN. LAWS ANN. § 15-7-14.1 (West 1956); S.D. CODIFIED LAWS § 25-6-17 (1997); UTAH CODE ANN. § 78B-6-146 (West 2013); VT. STAT. ANN. 33, § 5124 (1995); VA. CODE ANN. § 63.2-1220.2 (West 2010); WASH. REV. CODE ANN. § 26.33.420 (West 2009); W. VA. CODE ANN. § 48-10-902 (West 2001); WYO. STAT. ANN. § 1-22-114 (West 1977). While there are some states that do not delineate provisions for post adoption services, the law proposes bills for funding post placement services. See NEV. REV. STAT. ANN. § 127.275 (West 1993); N.C. GEN. STAT. ANN. § 108A-50.2 (West 2013); H.B. 4112, 97th Leg., Reg. Sess. (Mich. 2013); H.B. 537, 69th Leg., Reg. Sess. (Vt. 2007); H.C.R. 1074, 48th Leg., 2d Sess. (Okla. 2001).

cial, therefore, that the adopted child be placed in an environment that recognizes the significance of his issues.¹⁴⁴ This means affording the child an opportunity for the state to determine appropriate services or programming that is in the child's best interest.¹⁴⁵ Most states do not specifically staff professionals who are trained to identify emotional bonding disorders¹⁴⁶ much less provide services to adoptive families after finalization.¹⁴⁷ Some states enacted statutes or proposed bills to fund post placement services.¹⁴⁸ However, only seven jurisdictions make some provision for specific post adoption services.¹⁴⁹ Accord-

144. Obtaining post-adoption services is especially difficult for adoptive families that have adopted special needs children or ones that showed substantial psychosocial problems. Denise Anderson, *Post-Adoption Services: Needs of the Family*, 9 J. FAM. SOC. WORK 19, 21, 31 (2005).

145. Foster care professionals frequently make determinations for the child's best interest throughout its life in the system. Post & Zimmerman, *supra* note 140, at 490. Article 9 of The Hague Convention on International Adoption (signed 1994, entered into force 2008) regulates providers, but not adoptive families. HAGUE CONVENTION, *supra* note 9. The regulation requires that participating countries promote the development of adoption counseling and post-adoption services in their states. *Id.* Child Welfare League of America Standards, which is a coalition of public and private agencies, provides post-adoption services as one of its criteria for accreditation of private adoption agencies as well as those providing international adoptions. Standards of Excellence for Child Welfare Services, CWLA, <http://www.cwla.org/our-work/cwla-standards-of-excellence/standards-of-excellence-for-child-welfare-services/> <https://perma.cc/R8J7-UGPP>.

146. Most mental professionals are not trained in adoption and attachment issues; as a result, even if adoptive parents that are having problems seek help they will not find adequate assistance. Matcher, *supra* note 137.

147. Some states will merely address post adoption visitation of natural parents, grandparents, or siblings. The statutes may provide for contact with the adopted child as support during transitional periods or even long-term ties between siblings, the nature of in-depth behavioral and psychological support needed to address ongoing issues needs to be specifically provided for under the law. See *supra* note 146 (listing examples of states). Some states only have statutes regarding adoption records while other states only mandate post placement assessment and reporting. KY. REV. STAT. ANN. § 199.525 (West 1996); N.M. STAT. ANN. § 32A-5-40 (West 2005). In Florida, a statute requires that an agency make a reasonable attempt to contact the adoptive family one year after the adoption. FLA. STAT. ANN. § 39.812 (West 2015). South Carolina's statute requires a home study to be performed after an adoption takes place, but only for foreign adoptions. S.C. CODE ANN. § 63-9-910 (2008).

148. NEV. REV. STAT. ANN. § 127.275 (West 1993); N.C. GEN. STAT. ANN. § 108A-50.2 (West 2013); H.B. 4112, 97th Leg., Reg. Sess. (Mich. 2013); H.B. 537, 69th Leg., Reg. Sess. (Vt. 2007); H.C.R. 1074, 48th Leg., 2d Sess. (Okla. 2001).

149. California requires that pre-adoption and post-adoption services be available. CAL. WELF. & INST. CODE § 16124 (West 2011). Connecticut allows the Department of Children and Families to provide services after adoption such as

ingly, the states must provide for post adoption services that specifically address the underlying behavioral dysfunction that precedes the need to rehome.¹⁵⁰ Since attachment disorder and related bonding issues predominately cause disruption or dissolution of the adoption,¹⁵¹ state funding of post adoption services could reduce the incident of rehoming. Whether the state acts to fund services or enacts specific prohibition against rehoming, we must respond immediately to this practice that exposes our most vulnerable population to neglect and continued instability.¹⁵²

VIII. CONCLUSION

The formation and sustainability of the family structure is sacred. Rehoming children dismantles its sacred architecture in various ways: through advertising children on the Internet, through the absence of a process ensuring the rehomed child's well-being, and through the misuse of existing law (power of attorney) for temporary transfer of parental responsibility. In every manner, the rehomed child is dispossessed of legal protections that the state as *parens patriae* historically provides. Accordingly, the

support groups and behavioral management counseling. CONN. GEN. STAT. ANN. § 17a-121a (West 1999). Illinois and Tennessee require post-adoption services in order to prevent disruption, dissolution, or secondary placement. 750 ILL. COMP. STAT. ANN. 50/18.9 (West 2015); TENN. CODE ANN. § 36-1-143 (West 2009). Texas allows post-adoption services if services were provided prior to the adoption, such as parenting programs and counseling. TEX. FAM. CODE ANN. § 162.306 (West 1995). Minnesota's statute requires that the human services commissioner develop a "best practices guidelines" for post-adoption services. MINN. STAT. ANN. § 259.88 (West 2005). Nebraska requires that post-adoption services be provided for children that were former wards of the state. NEB. REV. STAT. ANN. § 71-824 (West 2009).

150. Behavioral issues are sometimes addressed by monitoring a new placement during an extended period beyond transition. Jordan, *supra* note 10, at 261. Monitoring the adopted child's development for longer than the current agency practice could benefit him greatly and possibly deter rehoming. *Id.*

151. Since the adoptive parents are ill equipped to handle these issues, dissolutions occur. See Williams, *supra* note 134. "Issues concerning attachment, bonding, identity, child development, loss, resilience, and trauma are frequently overlooked in the area of adoption, especially those adoptions that arise out of foster care." Post & Zimmerman, *supra* note 140, at 489.

152. A study showed that through stability and continuity in the home environment the adopted child's attachment issues improved. Pace & Zavattini, *supra* note 142.

states must enact laws that afford rehomed children an opportunity through administrative or judicial process to receive post adoption treatment or any other disposition that ensures their well-being using the best interest of the child standard.