

Regulating Unregulated Custody Transfer: A Comprehensive Solution

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INTRODUCTION

Many prospective adoptive parents picture international adoption as the permanent expansion of a family, a long-term commitment to a child.¹ But, what happens when this vision fails, when an internationally adopted child's adoptive parents turn out not to be her forever family? Some families have opted to engage in unregulated custody transfer, colloquially known as "rehoming."² This is the "abandonment of a child, by the child's parent, legal guardian, or a person or entity acting on behalf, and with the consent, of such parent or guardian by placing a child with a person who is not" a close relative or friend "with the intent of severing the relationship between the child and the parent or guardian of such child" and of handing over the legal rights and responsibilities of the child without ensuring the child's safety.³

In 2013, Reuters investigated the aftermath of failed international adoptions and offered Quita's true story as a prototypical unregulated custody transfer.⁴ Melissa and Todd Puchalla had adopted Quita from Liberia two years before they decided it was untenable to keep her.⁵ During that period, she had been diagnosed with serious health and behavioral issues.⁶ Melissa and Todd became concerned that she, now fourteen years old, posed a threat to their other children, and they

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1. See Dawn Friedman, *The Myth of the Forever Family: When Adoption Falls Apart*, BRAIN CHILD (Nov. 3, 2013), <https://www.brainchildmag.com/2013/11/the-myth-of-the-forever-family-when-adoption-falls-apart/> [<https://perma.cc/2EJ9-BAUX>].

2. CHILD WELFARE INFO. GATEWAY, UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN 2 (Oct. 2017), https://www.childwelfare.gov/pubPDFs/custody_transfers.pdf [<https://perma.cc/F3HF-KTCX>].

3. H.R. REP. NO. 116-2480, at 105–06 (2019) (alteration in original) (defining unregulated custody transfer in the proposed but not yet enacted Stronger Child Abuse Prevention and Treatment Act).

4. See Megan Twohey, *Americans Use the Internet to Abandon Children Adopted from Overseas*, REUTERS INVESTIGATES (Sept. 9, 2013), <https://www.reuters.com/investigates/adoption/#article/part1> [<https://perma.cc/GC8P-HEWH>]. *Reuters Investigates* published this true story about Quita's life after international adoption as part of a series exposing the practice of unregulated custody transfer and drawing national attention to a previously little-known gap in the law. See *id.* Reuters evaluated 261 cases of unregulated custody transfers in the United States. See *id.* Of the 261 cases, seventy-percent were failed international adoptions. See *id.* As this investigation indicates, the practice of rehoming makes internationally adopted children especially vulnerable to predators on the internet and serves as a breeding ground for neglect, abuse, and human trafficking. See *id.*

5. *Id.*

6. *Id.*

posted her picture in an advertisement on an online message forum used by adoptive parents who no longer desired to keep their internationally adopted children.⁷

Nicole and Calvin Eason, whose biological children had been removed from their home by child welfare authorities, volunteered to take Quita and presented Melissa and Todd with a home study that seemingly proved they were fit to be parents.⁸ Melissa and Todd dropped Quita off at the Easons' trailer in Illinois, six hours from their home in Wisconsin.⁹ Melissa called to check in on Quita, but after a few days the Easons stopped responding to her.¹⁰ Melissa then called Quita's new school, but Quita had never shown up, and state child protection officials eventually found Quita in New York.¹¹ The Easons had transported her there in the same car as a convicted armed robber out on parole.¹² Quita states that the Easons had made her sleep with them while Nicole was naked,¹³ and that their trailer was squalid.¹⁴

After authorities found Quita, she was sent back to Wisconsin.¹⁵ The Puchallas faced no criminal charges, such as for abuse or neglect, for giving Quita to the Easons, and the New York State Police did not charge the Easons for abuse, neglect, or any other similar charges.¹⁶ The Department of Justice eventually charged the Easons for three counts of attempting to transport a minor with the intent to engage in criminal sexual activity,¹⁷ but none of these charges pertained to the initial custody transfer through a power of attorney between the Easons and the Puchallas.¹⁸

First, this Note will evaluate the current governing international law for international adoption. Next, it will address the current federal and state law surrounding international adoption. This Note will then suggest a comprehensive solution by proposing a new protocol as well as amended domestic legislation to close the legal gaps in unregulated custody transfer and by offering an amendment to the ABA Standards on International Adoption for attorneys to impose additional ethical obligations on this area of practice.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. See Jenna Nance, *Rehoming: The Underground Marketplace for Adopted Children*, ADOPTION (Feb. 22, 2018), <https://adoption.com/rehoming-the-underground-marketplace-for-adopted-children> [<https://perma.cc/H88H-JQ4Y>].

16. See Twohey, *supra* note 4.

17. See Press Release, Office of Public Affairs, Department of Justice, Illinois Couple Sentenced for Multiple Kidnappings and Transporting Minor with Intent to Engage in Sexual Activity (June 21, 2016), <https://www.justice.gov/opa/pr/illinois-couple-sentenced-multiple-kidnappings-and-transporting-minor-intent-engage-sexual> [<https://perma.cc/RA27-DYYQ>].

18. See Twohey, *supra* note 4.

I. BACKGROUND

International adoption peaked in the United States in 2004 when American parents adopted 22,989 children from other countries.¹⁹ This figure represented a steady increase from 1999.²⁰ However, since 2004, international adoption numbers have plummeted.²¹ In 2018, only 4,058 internationally adopted children were brought to the United States.²² The Department of State's Annual Report on Intercountry Adoption for 2018 attributed recent decreases partly to the changing laws of other countries.²³

The largest decreases in adoption for 2018 were from China and Ethiopia.²⁴ China instituted a law in 2017 "restricting activities by foreign non-governmental organizations (NGOs)" that had an incidental impact on adoption, even though the law was not directly targeted at adoption.²⁵ In 2018, Ethiopia imposed an entire ban on international adoption, "citing numerous concerns including missing post-adoption reports, concerns about the welfare of children in the United States whose adoptions had been disrupted, instances of adoptive parents returning children to Ethiopia, and concerns about corruption . . ."²⁶

These restrictive laws have led to a decrease in availability for international adoption into the United States of infants and healthy children and a corresponding increase in availability of older children and children with disabilities.²⁷ The complications accompanying adopting an older child or a child with disabilities pose potential unanticipated burdens on adoptive families. For instance, adoption agencies may not adequately disclose the child's age and condition, so families do not anticipate having to expend the resources and time necessary after adoption to assist the child in acclimating to a new home.²⁸

19. U.S. STATE DEP'T, ADOPTION STATISTICS (2018), https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/adoption-statistics1.html?wcmode=disabled# [<https://perma.cc/3FT9-V3NE>]. The State Department provides a vast range of information about international adoption and the State Department's role in ensuring compliance domestically with international adoption standards. *See id.*

20. *See id.*

21. *See id.*

22. *See id.*

23. U.S. STATE DEP'T, ANN. REP. ON INTERCOUNTRY ADOPTION (2018), <https://travel.state.gov/content/dam/NEWadoptionassets/pdfs/Tab%201%20Annual%20Report%20on%20Intercountry%20Adoptions.pdf> [<https://perma.cc/RU6J-HAZG>].

24. *See id.*

25. *See id.*

26. *See id.*

27. *See* 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/LF2V-ZUJV>].

28. *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-15-733, CHILD WELFARE: STEPS HAVE BEEN TAKEN TO ADDRESS UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN 16 (2015) [hereinafter GAO REPORT].

One of the most common difficulties an adoptive child faces is reactive attachment disorder (RAD).²⁹

Reactive attachment disorder is a rare but serious condition in which an infant or young child doesn't establish healthy attachments with parents or caregivers. Reactive attachment disorder may develop if the child's basic needs for comfort, affection and nurturing aren't met and loving, caring, stable attachments with others are not established.³⁰

While not conclusive, "some research suggests that some children and teenagers with reactive attachment disorder may display callous, unemotional traits that can include behavior problems and cruelty toward people or animals."³¹

Even when parents are informed of a child's physical needs, they may not be prepared to meet the emotional needs of the child.³² For example, the Puchallas engaged in unregulated custody transfer because of the strain that they perceived Quita had placed on their preexisting family.³³ Governing international law only requires parents to complete ten hours of pre-adoption training before adopting internationally in the United States, which would explain the lack of comprehensive understanding of the child's potentially unique needs before receiving the child into the home.³⁴

International and federal law do not require states to provide post-adoption services, and only twenty-one states provide post-adoption services to all adoptive families.³⁵ Of these twenty-one states, only thirteen provide equal status to private adoptions and adoption out of foster care.³⁶ With this widespread lack of state support, parents may feel inadequate to assist the child, but they often cannot

29. See Susan Caughman & Isolde Motley, *The Facts About Reactive Attachment Disorder*, ADOPTIVE FAMILIES, <https://www.adoptivefamilies.com/adoption-process/reactive-attachment-disorder-rad/> [https://perma.cc/P4S8-CFH8] (last visited Feb. 18, 2020).

30. *Reactive Attachment Disorder, Diseases & Conditions*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/reactive-attachment-disorder/symptoms-causes/syc-20352939> [https://perma.cc/C78Y-V5RG] (last visited Nov. 13, 2019).

31. See *id.*

32. See GAO REPORT, *supra* note 28, at 1.

33. See Twohey, *supra* note 4. The Puchallas expressed concern that Quita would harm their other children. See *id.*

34. *Preadoption Training*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/adoption/adoptive/before-adoption/preadoption/> [https://perma.cc/R SJ9-7RHQ] (last visited Nov. 13, 2019). The Child Welfare Information Gateway is a congressionally mandated information service meant to promote "the safety, permanenc[e], and well-being of children . . ." See *About Child Welfare Information Gateway*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/aboutus/> [https://perma.cc/XU52-WTMW] (alteration in original) (last visited Dec. 2, 2019).

35. Susan Livingston Smith, *Supporting and Preserving Adoptive Families*, THE DONALDSON ADOPTION INST. 15–16 (April 2014), <https://chronicleofsocialchange.org/wp-content/uploads/2014/04/ASAP-State-Study-Final.pdf> [https://perma.cc/4TSS-D4FU] [hereinafter DONALDSON STUDY]. This study is the latest available with respect to statistics on adoption services.

36. See *id.* at 16.

legally relinquish their parental rights to the state because the foster system is already flooded, and state law regarding this topic is far from uniform.³⁷

Parents may not be able to relinquish their child to the state through refusal to assume parental responsibility, but the case may be presented before the court in which a judge will decide whether termination is appropriate.³⁸ Even this process is not available in every state.³⁹ The only official means for parents of internationally adopted children to have their children re-adopted is through private adoption, which is usually very costly.⁴⁰

As an alternative to private adoption, some adoptive parents, like Quita's, have used internet forums advertised as support groups for parents of internationally adopted children to conduct an unregulated custody transfer through a power of attorney process with no oversight from state or federal officials.⁴¹ While the home study the Easons had presented to the Puchallas had been fabricated, they need not have presented any home study at all because the instrument used to hand over guardianship rights of Quita to the Easons was a simple notarized power of attorney.⁴² Power of attorney is often used for the purposes of temporarily assigning guardianship rights of a child to a close friend or family member, as in the case of a military deployment or a family crisis.⁴³ However, in recent years it has served as a legal loophole for adoptive parents who no longer want the responsibility of caring for an adopted child.⁴⁴ In thirty-seven states, this is still legal.⁴⁵

II. EXISTING LAW

A. INTERNATIONAL LAW

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (“The Convention”) is the international instrument governing intercountry adoption, which 102 countries have ratified, and the United States ratified this treaty in 2007.⁴⁶ Under the Convention, each State is required

37. See *Can You Give Your Child Up to the State? 4 Ways to Give Your Child the Support and Love They Need*, AM. ADOPTIONS, <https://www.americanadoptions.com/pregnant/how-to-give-child-up-to-state> [https://perma.cc/ENX2-NVZZ] (last visited Nov. 13, 2019).

38. See *id.*

39. See *id.*

40. See Emma C. Martin, *Comment: A (Re)Adoption Story: What is Driving Adoptive Parents to Rehome Their Children and What Can Texas do About It?*, 5 TEX. A&M L. REV. 537, 539 (2018) (supporting criminalization of unregulated custody transfer).

41. See Twohey, *supra* note 4.

42. *Id.*

43. CHILD WELFARE INFO. GATEWAY, *supra* note 2, at 2.

44. See Twohey, *supra* note 4.

45. See CHILD WELFARE INFO. GATEWAY, *supra* note 2, at 2.

46. Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 1870 U.N.T.S. 167, available at <http://www.hcch.net/upload/conventions/txt133en.pdf> [https://perma.cc/2F83-LD2Y] [hereinafter “The Convention”]; HAGUE CONVENTION ON PRIVATE INTERNATIONAL LAW, STATUS TABLE, <https://www.hcch.net/en/instruments/conventions/status-table/?cid=69> [https://perma.cc/6HNE-RAGL] (last visited Feb. 19, 2020).

to designate a Central Authority, which oversees Convention adoptions between ratifying countries.⁴⁷ In the United States, this Central Authority is the Department of State.⁴⁸ The Convention system is designed to facilitate transparent adoptions across borders and to ensure that children will receive the necessary immigration documents upon arrival in the country of the adoptive parents.⁴⁹

While the Convention provides robust safeguards for pre-adoption suitability checks and requires monitoring of the financial component of international adoption to combat human trafficking and corruption, it is much less comprehensive in pre-adoption training and tracking post-adoption procedures. The Convention only requires post-adoption reporting, the process by which the receiving Central Authority appraises the sending Central Authority of the child's wellbeing after adoption, when the home country requires it.⁵⁰ The Convention does not lay out the procedure that a Central Authority should follow in the event that the adoption fails after it has become permanent under the terms of the Convention.⁵¹ Critically, the Convention was drafted in 1993 before widespread access to the internet existed, so the drafters likely could not have envisioned the phenomenon of rehoming in its current form, which relies heavily on online chat forums to perpetuate.⁵²

B. DOMESTIC STANDARDS

Surprisingly, the American Bar Association ("ABA") has not proposed a set of ethical standards to govern attorneys' representation in international adoption. Though family law has typically been a creature of state law, international adoption proceedings in the United States are largely governed by federal law because of the Central Authority structure under the Convention.⁵³ The United States' domestic implementing legislation under the Convention consists of the Intercountry Adoption Act of 2000 (IAA)⁵⁴ and the Intercountry Adoption Universal Accreditation Act of 2012 (UAA).⁵⁵ The Child Abuse Prevention and

47. STATE DEP'T, UNDERSTANDING THE HAGUE CONVENTION, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/understanding-the-hague-convention.html> [https://perma.cc/3BEC-U2GT] (last visited Nov. 13, 2019).

48. *See id.* The Department of State has designated the Intercountry Adoption Accreditation and Maintenance Entity, Inc. (IAAME) as the entity that ensures adoption agencies in the United States facilitating the international adoption process comply with the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption's standards. *See id.*

49. *See* The Convention, *supra* note 46; UNDERSTANDING THE HAGUE CONVENTION, *supra* note 47.

50. *See* The Convention, *supra* note 46, art. 9(e), 20.

51. *See id.* art. 21 (applying only where the adoption takes place *after* the "transfer of the child" to the receiving State).

52. *See Twohey, supra* note 4.

53. *But see* The Convention, *supra* note 46, art. 6(2) (explaining that States may appoint more than one Central Authority in order to accommodate a federal system of government).

54. *See* Intercountry Adoption Act of 2000, Pub. L. No. 106-279, 42 U.S.C. §§ 14901-14954 (2000).

55. *See* Intercountry Adoption Universal Accreditation Act of 2012, Pub. L. No. 112-276, 42 U.S.C. § 14925 (2012).

Treatment Act, while not enacted in response to the Convention, relates to international adoption in that it provides funding to states through federal grants in order to create preventive measures against child abuse and neglect, which could apply in the international adoption context.⁵⁶ Moreover, all states have signed the Interstate Compact on the Placement of Children (ICPC), which is meant to govern adoption across state lines through a coordination process similar to that of the Central Authority system in the Hague Convention.⁵⁷ However, local and state authorities rarely comply with the ICPC because there is not a universal enforcement mechanism.⁵⁸ All of the current domestic measures fail to address in a uniform manner the practice of unregulated custody transfer, as explained below.

1. EXISTING AMERICAN BAR ASSOCIATION STANDARDS

In 1996, the ABA put forth the Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (“ABA Standards”), which focus “on the protection of the legal rights of the child client” in abuse and neglect cases.⁵⁹ The goal of these standards was to increase the quality and uniformity of legal representation for children, especially in abuse and neglect cases.⁶⁰ In 2011, the ABA developed the Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings (“Model Act”), which formalizes the ABA Standards.⁶¹ The principle of these standards is to represent the child in a “developmentally appropriate” manner.⁶² Under the Model Act, the lawyer is client-directed in much the same way as in traditional representation and is commissioned to serve as the child’s advocate:

The attorney should give the child frank advice on what he or she thinks is the best legal remedy to achieve the child’s expressed wishes. This decision should not be based on the attorney’s mores or personal opinions; rather it should focus on the attorney’s knowledge of the situation, the law, options available and the child’s wishes.⁶³

56. See Child Abuse Prevention and Treatment Act, 42 U.S.C. §§ 5111-5115 (2012).

57. See *Text of Interstate Compact on the Placement of Children*, AM. PUB. HUM. SERVS. ASS’N, https://aphsa.org/AAICPC/AAICPC/text_icpc.aspx [<https://perma.cc/6PFW-DXQN>] (last visited Dec. 2, 2019); NAT’L CTR. FOR INTERSTATE COMPACTS (NCIC), HISTORY OF THE ICPC, <https://www.csg.org/knowledgecenter/docs/ncic/HistoryoftheICPC.pdf> [<https://perma.cc/PR9S-WVGZ>] (last visited Feb. 14, 2020); see also CHILD WELFARE INFO. GATEWAY, *supra* note 2 (listing state statutes that incorporate the ICPC).

58. See Twohey, *supra* note 4.

59. STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (AM. BAR ASS’N 1996) [hereinafter STANDARDS].

60. See *id.*

61. MODEL ACT GOVERNING THE REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT, AND DEPENDENCY PROCEEDINGS (AM. BAR ASS’N 2011) [hereinafter MODEL ACT].

62. See *id.* § 7(c).

63. See *id.* at 19–20.

The role of being the child's lawyer is completely separate from a guardian *ad litem* or other specially trained best interests advocate who is not bound by the child's preferences but instead assists the court in determining what the child's needs are.⁶⁴

A lawyer is required to evaluate the child's capacity and "establish a lawyer-client relationship and zealously advocate for the client."⁶⁵ This includes "meeting with the child prior to each hearing and for a least one in-person meeting every quarter."⁶⁶ Additionally, the lawyer should continually investigate the relevant medical and educational records throughout the course of the proceedings.⁶⁷

The Model Act was instrumental in advocating for the right to counsel for children, serving as an impetus for federal policy changes, such as Title IV-E, which provides federal funding to states who provide legal representation for children.⁶⁸

Because the Model Act only applies in abuse and neglect cases, children who suffer from the practice of rehoming do not get the benefit of these standards since rehoming does not constitute abuse or neglect per se.⁶⁹ While these robust standards cannot protect children against all rehoming situations, they may provide some protection when a state has banned rehoming. However, the Model Act may be used as a template to address rehoming cases, as discussed below.

2. EXISTING FEDERAL LAW

Following the United States' ratification of the Convention, Congress enacted the IAA, which serves as the implementing legislation for the Convention in the United States.⁷⁰ The IAA ensures that the United States is compliant with the Convention's requirements for international adoption when the United States and another ratifying country engage in international adoption practices.⁷¹ In 2012, Congress enacted the UAA, which mandates Convention standards in international adoption when the United States is one of the involved parties, even if the sending or receiving country has not ratified the Convention.⁷²

The IAA designated the Department of State as the Central Authority and defined the responsibilities of the Secretary of State and Attorney General.⁷³ It also specified the reporting requirements of the Central Authority, laid out the

64. *See id.* §§ 1(d), 1(e) cmt.

65. *See id.* § 4(c) cmt.

66. *Id.* § 7(b)(5).

67. *See id.* § 7(b)(7).

68. Amy Harfeld, *Twenty Years of Progress in Advocating for a Child's Right to Counsel* (Mar. 22, 2019), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2019/spring2019-twenty-years-of-progress-in-advocating-for-a-childs-right-to-counsel/> [https://perma.cc/2RZP-RZXH].

69. *See, e.g.*, MISS. CODE ANN. § 93-31-3 (2019).

70. Intercountry Adoption Act of 2000, Pub. L. No. 106-279, 42 U.S.C. §§ 14901–14954 (2000).

71. *Id.* § 14901.

72. *See* Intercountry Adoption Universal Accreditation Act of 2012, Pub. L. No. 112-276, 42 U.S.C. § 14925 (2012).

73. 42 U.S.C. §§ 14911–14914.

accreditation process for adoption service providers, and established the immigration process for adopted children.⁷⁴

Section 104 of the IAA requires the Department of State to provide an annual report on intercountry adoptions that includes documentation of every disrupted adoption in the United States.⁷⁵ In the Annual Report on Intercountry Adoption for 2018, the Department of State explained “[m]issing post-adoption reports continue to cause foreign officials concern about the welfare and whereabouts of children adopted by U.S. citizen families and thus risk undermining the continuation of intercountry adoption in [some] countries.”⁷⁶ The report emphasizes that “[t]he Department continues to regularly meet with other governmental agencies to raise awareness of [unregulated custody transfer], discuss possible preventative strategies, and facilitate” an exchange of information.⁷⁷ However, the report offers no concrete solutions as to how the Department of State will fulfill its IAA-mandated obligations to address unregulated custody transfers from a national perspective.

The IAA offers a civil and criminal enforcement on those who make a “misrepresentation, with respect to a material fact . . . intended to influence or affect in the United States or a foreign country . . . the relinquishment of parental rights or the giving of parental consent relating to the adoption of a child” under the Convention.⁷⁸ The problem with applying this statute to unregulated custody transfer is that the fraud or misrepresentation of individuals like the Easons would not relate “to the adoption of the child in a case subject to the Convention” since the adoption had already taken place by the time that the unregulated custody transfer occurred.⁷⁹

The other federal legislation relevant to international adoption is the Child Abuse Prevention and Treatment Act (“CAPTA”), which seeks to detect and prevent abuse of children in the family context.⁸⁰ CAPTA could potentially reach children who have been adopted internationally because it distributes funding to states who provide family services after adoption to prevent neglect and abuse.⁸¹ However, CAPTA does not address preventative measures for disrupted

74. See 42 U.S.C. §§ 14921–14924, 14931–14932.

75. 42 U.S.C. § 14914(b)(3). Congress did not define “disruption” in the definitions section of the statute. Thus, Congress was not clear on its intention to include unregulated custody transfer within the concept of disruption. However, even if Congress had intended to include unregulated custody transfer within the definition of disruption, the Department of State has failed to provide reporting for even formalized adoption disruptions, which may be defined as failed adoptions that lead to re-adoption through the private agency adoption system in the United States. See ANN. REP. ON INTERCOUNTRY ADOPTION, *supra* note 23.

76. ANN. REP. ON INTERCOUNTRY ADOPTION, *supra* note 23.

77. See *id.*

78. 42 U.S.C. § 14944.

79. *Id.*

80. See Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5116(a) (2012).

81. See 42 U.S.C. § 5116(e).

international adoption or mandate that states provide these resources.⁸² While CAPTA does not explicitly address unregulated custody transfers, the state-federal mechanism CAPTA embodies serves as a model of how states may employ federal funding to improve services to children and their families.⁸³ Under CAPTA, states may be awarded with funding for, among other things, the following:

[T]he training of professional and paraprofessional personnel in the fields of health care, medicine, law enforcement, judiciary, social work and child protection, education, child care, and other relevant fields, or individuals . . . who are engaged in, or intend to work in, the field of prevention, identification, and treatment of child abuse and neglect, including the links between domestic violence and child abuse and neglect . . . [and] for the training of personnel in best practices to promote collaboration with the families from the initial time of contact during the investigation through treatment; for the training of personnel regarding the legal duties of such personnel and their responsibilities to protect the legal rights of children and families⁸⁴

In addition, states may receive federal funding for mutual support programs, which “establish or maintain a national network of mutual support, leadership, and self-help programs as a means of strengthening families in partnership with their communities.”⁸⁵

If a state desires a grant for the above-stated purposes, the state must apply to the Secretary of Health and Human Services detailing how substance abuse has impacted the state, what challenges the state faces in creating new plans that provide safe care for children, how the funds will be utilized, what structure will be set up to implement the initiatives laid out in CAPTA, and how the progress of the measures will be monitored.⁸⁶

Although CAPTA does not currently provide for education or support services specifically designed for internationally adopting families, this statute provides a model for how states and the federal government can work in concert to combat the causes of unregulated custody transfers, namely, the lack of resources supporting families with internationally adopted children.

3. EXISTING STATE LAW

As of October 2017, thirteen states had criminalized unregulated custody transfer in some form.⁸⁷ In twenty-eight states, the District of Columbia, Guam, and

82. *See id.*

83. *See* Sean McIntyre, *A Proposal to Eliminate a Black Market for Children*, 66 CASE W. RES. L. REV. 1117, 1143 (2016).

84. 42 U.S.C. § 5106(a)(1).

85. *See id.* § 5106(a)(3).

86. *See id.* § 5106(a)(7)(C).

87. *See* CHILD WELFARE INFO. GATEWAY, *supra* note 2, at 2. The ICPC is inadequate to handle unregulated custody writ-large because it only applies when a child has been transferred across state lines and is not

the Virgin Islands, specific statutes delimit when a power of attorney may be used to “delegate parental authority over their child to another person.”⁸⁸ These statutes emphasize the intended short-term duration of a power of attorney. Some states limit this power to relatives, and Colorado, Maine, North Carolina, and Wisconsin prohibit advertising of children for unregulated custody transfers.⁸⁹ “In eight of the states in which [unregulated custody transfer] is prohibited, it is not a violation of the law prohibiting [unregulated custody transfer] if the child is placed with a relative of the child.”⁹⁰

However, ultimately these statutes are not uniform, and allowing each state to criminalize unregulated custody transfers independently has led to a patchwork approach that fails to address questions that arise when a child is transferred from a state that criminalizes the behavior to a state that does not criminalize the behavior.⁹¹

III. PROPOSED SOLUTIONS

A. INTERNATIONAL SOLUTION

While the Convention does not currently address unregulated custody transfers, the gap may be remedied in two ways. First, unregulated custody transfers should be officially condemned in the current proposed Toolkit to the Convention, which provides guidelines to ratifying countries as to best practices in international adoption.⁹² This official condemnation in the Toolkit would raise awareness of the problem and establish an official perspective on the practice from the Convention itself. Second, a protocol to the Convention should be adopted that would require mandatory post-adoption proceedings in order to create accountability between the receiving Central Authority and the adoptive parents and between the Central Authorities of the sending and receiving countries. This combination would allow for both a short-term and long-term solution at the international level.

uniformly enforced, with some states not even attaching penalties to violations. See Michael D. Aune, Note, *Unregulated Custody Transfers: Why the Practice of Rehoming Should Be Considered a Form of Illegal Adoption and Human Trafficking*, 46 GA. J. INT'L & COMP. L. 185, 195 n.61 (2017).

88. See CHILD WELFARE INFO. GATEWAY, *supra* note 2, at 3. Child Welfare Information Gateway's latest report on unregulated custody transfer includes information only up to October 2017. See *id.*

89. See *id.*

90. See *id.* at 4.

91. See *id.*

92. WORKING GROUP ON PREVENTING AND ADDRESSING ILLICIT PRACTICES IN INTERCOUNTRY ADOPTION, CONCLUSIONS AND RECOMMENDATIONS OF THE WORKING GROUP ON PREVENTING AND ADDRESSING ILLICIT PRACTICES IN INTERCOUNTRY ADOPTION 1 (2019), <https://assets.hcch.net/docs/cc570a8d-bea9-40fd-b7f7-f70cb26a9c90.pdf> [<https://perma.cc/8YA2-RT7W>] (last visited Nov. 14, 2019).

1. TOOLKIT AMENDMENT

In May 2019, the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption, an official group established within the Convention's framework, met "to consider the development of more effective and practical forms of cooperation between States to prevent and address specific instances of abuse."⁹³ This meeting was a continuation of a 2017 meeting, in which the Working Group decided to develop a toolkit to address "illicit practices" in international adoption.⁹⁴ One of the mechanisms to address these illicit practices is the Working Group's Fact Sheets, which identify weaknesses and illicit practices in the international adoption system.⁹⁵ One of the new Fact Sheets pertains to record-keeping, and another relates to circumventing the 1993 Convention procedure.⁹⁶

First, these Fact Sheets should be amended to include a formal condemnation of unregulated custody transfers because they are undocumented. Unregulated custody transfers circumvent the 1993 Convention procedure by allowing potential guardians who have not been required to meet the rigorous Convention standards for adoptive parents to take legal custody of internationally adopted children without any notification process to the Central Authority. These Fact Sheets should urge parties to the Convention to adopt measures for addressing post-adoption transfers in light of the growing problem of unregulated custody transfer in the context of the internet, a phenomenon that was likely unanticipated in 1993 when the Convention was created.

This Note proposes the following language:

The Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption has identified unregulated custody transfer as a practice that circumvents the basic principle of the Convention, which is to act in the best interest of an internationally adopted child. Unregulated custody transfer is defined as the transfer of a child subject to the Convention after the initial international adoption through any means other than official re-adoption or placement with a family member within the receiving country. Each Central Authority should take steps to identify unregulated custody transfers and provide support and guidance to families if the adoption is no longer viable.

Second, these Fact Sheets should urge greater consideration of the process for provisional adoptions, in which some countries allow international adoption only after a provisional placement period where the child resides with the receiving

93. *Id.* at 2 (citing *Conclusions and Recommendations adopted by the Third Meeting of the Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (June 25, 2010)).

94. *See id.* at 3.

95. *See id.*

96. *See id.*

family for “several months” before finalizing adoption.⁹⁷ “Those countries may then require prospective adoptive parents to submit periodic post-placement reports.”⁹⁸ If more countries adopted this practice, with the additional requirement that “licensed social worker[s] or the primary adoption service provider” prepare these reports, one of the major causal factors for unregulated custody transfers would be eliminated because families would no longer feel trapped with a child for whom they cannot care.⁹⁹ The inclusion of these suggestions in the Draft Toolkit will bring awareness to the largely unaddressed unregulated custody transfer issue on an international level.

2. OPTIONAL PROTOCOL

The more robust international solution would be for the ratifying parties of the Convention to adopt an optional protocol. This Note proposes the following language for such a protocol:

The Central Authority of the receiving country must notify the Central Authority of the sending country once a year for a period of five years after the international adoption has been finalized or until the child is eighteen, whichever comes first. This report must contain the adoptive family’s current address, the names and ages of those living in the home at the time of reporting, the child’s latest medical records, and qualitative information concerning the child’s acclimation to the adoptive home. The Central Authority of the receiving country must notify the Central Authority of the sending country if the child is no longer living with the adoptive family and must provide the current address and living situation of the child and the reason that the child is no longer residing with the adoptive family.

The addition of this protocol would likely require more deliberation and time than the Toolkit formation and amendments, which are set to be complete in 2021, but the Toolkit amendments could serve as an impetus to adopt this proposed protocol, ultimately leading to a more transparent post-adoption process.¹⁰⁰ The proposed protocol would be instrumental for two reasons. First, the protocol would require regulation of the domestic reporting system so that each Central Authority is more accountable for ascertaining the welfare of the children adopted into its country. Second, the protocol would allow for informed policy decisions as countries have increasingly tightened their bans on international

97. *What to Expect After Adoption*, STATE DEP’T, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/post-adoption/what-to-expect-after-adoption.html> [<https://perma.cc/8QPY-VRC2>] (last visited Nov. 14, 2019).

98. *Id.*

99. *See id.*

100. *See* WORKING GROUP ON PREVENTING AND ADDRESSING ILLICIT PRACTICES IN INTERCOUNTRY ADOPTION, CONCLUSIONS AND RECOMMENDATIONS OF THE WORKING GROUP ON PREVENTING AND ADDRESSING ILLICIT PRACTICES IN INTERCOUNTRY ADOPTION 5 (2019), <https://assets.hch.net/docs/29ca5ffe-0bf6-47f6-81e6-ad57793bf469.pdf> [<https://perma.cc/8YA2-RT7W>] (last visited Nov. 14, 2019).

adoption based on concerns that the children adopted from their home country face abuse or neglect in the receiving country.¹⁰¹ Rather than conjecture on failed adoptions, countries will have the means to ascertain how many children adopted from one country do not find their forever home the first time around in the new country.

One concern that this protocol may raise is the burden the procedures outlined within the protocol place on Central Authorities to monitor extensively the whereabouts and condition of internationally adopted children, long after the child has been adopted. However, these procedures are not unduly burdensome because Central Authorities are already required by the Convention to have post-adoption reporting procedures in place when the sending country requires post-adoption reporting, and ratifying parties would not be required to implement any new domestic law, except that which relates to the Central Authority, thus skirting federalism issues as in the United States where state law has traditionally governed adoption.¹⁰² The protocol would be non-self-executing so that countries have considerable latitude in how they deem it best to implement these measures. Because the protocol would not be overly burdensome and adheres to the original principal of the Convention to act in the best interest of the child, the United States should adopt it as a corollary to the treaty.

Thus, the new protocol would simply be an enhancement of a process already legally required by the Convention itself. Moreover, if a family has cared for a child for the period of five years or until the child is eighteen, the vulnerabilities associated with unregulated custody transfers are greatly reduced. On the other hand, if post-adoption reporting reveals abuse, neglect, or abandonment, then the child's home country has a right to be aware of the child's situation, and the child will have a better chance of being protected in the receiving country. Thus, an optional protocol could address a gap that is currently untouched by international law instruments without requiring implementing legislation in the ratifying countries, except that which is necessary to bring the Central Authority in alignment with the new procedures.

B. DOMESTIC SOLUTION

In order to effectively address unregulated custody transfers domestically, first, the ABA should enact international adoption standards that encourage attorneys to align with the goals of the Hague Convention and the Model Act. Next, existing federal law should be amended to comply with the proposed optional protocol. Federal law should go beyond the proposed protocol in two ways in the

101. See Ben Christopher, *Why Did International Adoption Suddenly End?*, PRICEONOMICS, <https://priceonomics.com/why-did-international-adoption-suddenly-end/> [<https://perma.cc/6QMW-LKHB>] (last visited Feb. 14, 2020).

102. See generally *What to Expect After Adoption*, *supra* note 97 (explaining the general functions of the Central Authority and its post-adoption reporting mechanisms).

United States: Federal law should be amended to create greater oversight for the power-of-attorney process, and federal law should be amended to require post-adoption check-ins for families. Finally, a proposed bill, passed in the House but not yet passed in the Senate, that would address unregulated custody transfers at the federal level should be signed into law. These measures would create more accountability at a national level between adoptive parents and the Department of State as well as between the Department of State and the Central Authorities of other countries.

1. AMENDMENT TO AMERICAN BAR ASSOCIATION STANDARDS

The ABA should compose international adoption standards that encourage attorneys to come into alignment with the Hague Convention and the current Model Act. These new international adoption standards would apply to attorneys who work for Hague-accredited adoption service providers and to the immigration attorneys who facilitate international adoption. Just as the Model Act requires attorneys to investigate the living situation of the child and the child's welfare throughout the course of representation in abuse and neglect cases,¹⁰³ the new international adoption standards would require adoption service provider attorneys and immigration attorneys to check in on the internationally adopted child throughout the adoption process and after the adoption periodically to ensure the child is not facing abuse or neglect. Attorneys involved in the international adoption process should be required to treat the child as the client and work to represent the child's interests throughout the adoption and for a set period of time after the adoption proceedings. This would further serve to create accountability between the adoptive parents and the legal professionals responsible for setting the international adoption in motion. Because the children in these situations are often just as vulnerable as the children referred in abuse and neglect proceedings, a similar mechanism to the Model Act would present a parallel standard for representation of the child's interests.

The non-attorney adoption service provider employees should be treated as an analogue to the best interests advocates of the Model Act, proposing solutions to the court in the best interests of the child in the case of an abuse and neglect proceeding after a case of rehoming.

Just as the Model Act was instrumental in advocating for the right to counsel for children, ultimately leading to federal policy changes which provide funding to states to represent children through Title IV-E,¹⁰⁴ a new set of standards for international adoption proceedings would lead to a greater awareness of the gaps in representation that children face in the international adoption setting and efforts to bridge this gap. This child-centered approach would work toward the

103. See MODEL ACT § 7(c) cmt.

104. See Harfeld, *supra* note 68.

ends of the Hague Convention, aligning international adoption attorneys in the United States with the international standard the Hague Convention promotes.

2. FIRST AMENDMENT TO IAA AND UAA

The first solution to unregulated custody transfers at the federal level is for the United States to ratify the proposed optional protocol and to amend both the IAA and UAA to include provisions that implement the protocol's requirement for post-adoption reporting for a period of five years or up to child's eighteenth birthday. Second, the statutes should also include criminal penalties for parents and adoption service providers who do not comply with the reporting requirements. As the 2018 Report on Intercountry Adoption explains, the failure to relay these mandatory reports to the sending countries has eroded sending countries' confidence in the ability of the United States to properly monitor international adoption and leaves internationally adopted children vulnerable to abuse, neglect, and trafficking unnoticed by the Department of State.¹⁰⁵

By requiring post-adoption reporting for all internationally adopted children and establishing criminal penalties for parents and adoption service providers who do not comply, the United States will commit itself to serious oversight after adoption occurs, the lack of which is a current loophole for unregulated custody transfer. An increase in reporting provides accountability, which will ultimately allow authorities to identify more quickly if the child is in a vulnerable situation in her new home before the situation escalates to the need for an unregulated custody transfer. Through this process, authorities may direct the family to the available resources in their area.

3. SECOND AMENDMENT TO THE IAA AND UAA

The second solution at the federal level is another amendment to the IAA and UAA, which would address the actual power-of-attorney process. Specifically, child protective authorities should be introduced any time a power-of-attorney guardianship transfer occurs in which an adopted child is involved. If an adopted child is involved, then the prospective guardians should be required to pay for and complete a home study by a private agency, with a special requirement for international adoption that the home study be completed by a Hague-accredited adoption service provider.

This requirement would essentially replicate the process required for the initial adoptive family to adopt a child internationally in the first place, at least ensuring that the living standards of the child in the new home meet the minimum standards of the Convention, which include interviews with the prospective family, a home visit, mental health assessments, financial assessments, investigation into the criminal history of the prospective parents, a check into the child abuse

105. See ANN. REP. ON INTERCOUNTRY ADOPTION, *supra* note 23.

registries, and an ultimate determination of suitability.¹⁰⁶ This process would significantly reduce unregulated custody transfers like Quita's, in which the home study Nicole Eason presented was fabricated.¹⁰⁷

4. THIRD AMENDMENT TO THE IAA AND UAA

The third amendment to the IAA and UAA would require parents of internationally adopted children to complete post-adoption check-ins as a separate process from the Department of State's post-adoption reporting requirements. This continued oversight means that the same adoption service providers who completed the international adoption would be responsible for performing check-ins in the post-adoption context and referring families to available resources if a family is struggling to care for their internationally adopted child.¹⁰⁸

The IAA and UAA should require the Department of State to maintain a list of these resources as well, with specific focus on which resources are most applicable for international adoptions. The proposed amendment would attack the sense of helplessness that many families feel once they adopt a child internationally and inject accountability into the post-adoption process.

Quita's adoptive parents, like so many others on online message boards, expressed their frustration with the adopted child and their lack of resources in dealing with her behavior.¹⁰⁹ A mandatory check-in scheme would have detected and mitigated these issues before the Puchallas escalated to unregulated custody transfer. In current formulation, this amendment would not have any teeth because only twenty-one states offer any post-adoption resources to families of internationally adopted children.¹¹⁰ However, this gap may easily be solved by an amendment to CAPTA, which will be discussed below.

Ultimately, these three proposed amendments to the IAA and UAA would accomplish the goal of creating more accountability in the aftermath of Convention adoptions and address possible concerns, such as those of the Puchallas, before the home situation escalates to the point where an adoptive family feels the need to engage in an unregulated custody transfer. Some have argued that rather than implement post-adoption reporting, the solution is to criminalize unregulated custody transfer.¹¹¹

However, criminalization of unregulated custody transfer presents major concerns for the protection of these children by creating a catch-22 situation. On the

106. See U.S. CITIZENSHIP AND IMMIGRATION SERVICES, HAGUE HOME STUDY GUIDELINES, <https://www.uscis.gov/adoption/home-study-information/hague-home-study/hague-home-study-guidelines> [https://perma.cc/RRB6-J9MP] (last visited Nov. 14, 2019).

107. See Twohey, *supra* note 4.

108. UNDERSTANDING THE HAGUE CONVENTION, *supra* note 47.

109. See Twohey, *supra* note 4.

110. See DONALDSON STUDY, *supra* note 35.

111. See, e.g., 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, 2130 (2015).

one hand, if parents fear criminal liability and keep the child, the child may remain in a home where she is unloved or unwanted, and the psychological and emotional effects of remaining in such a home may prove more damaging than an unregulated custody transfer. On the other hand, if parents still decide to rid themselves of the child, they will find more innovative ways of completing the unregulated custody transfer, which would potentially be much more difficult to track than the power-of-attorney process.

Thus, a reporting and accountability scheme in the event of unregulated custody transfers allows parents to transfer the internationally adopted child as long as a suitable home is found, thus incentivizing parents to utilize home studies and search for families who would meet the requirements of the home study. The proposed amendments would essentially turn unregulated custody transfers into regulated custody transfers.

5. FEDERAL-STATE SOLUTION

In the United States, states have traditionally created and regulated family law, but due to the nature of the Convention's requirements, states have largely taken a back seat in the international adoption context. However, rather than states reviving the ICPC or creating a uniform state law, which would still not address the lack of funding available for post-adoptive support, Congress should implement a federal funding program that utilizes state authorities and local resources to address the issue of unregulated custody transfer.

The Stronger Child Abuse Prevention and Treatment Act ("SCAPTA") that was passed in the House and presented in the Senate on May 21, 2019, but which the Senate has yet to pass, would initiate research into how a funding program in the post-adoption context could model CAPTA.¹¹² While SCAPTA would not provide funding to states at this time, its goal is to produce findings that will lead to enacting a system that provides a similar support structure to adoptive families as CAPTA provides to families vulnerable to or suffering the consequences of substances abuse.¹¹³

SCAPTA would be the first federal law to explicitly address the process of unregulated custody transfers. The version of SCAPTA passed by the House defines unregulated custody transfer in the following way:

(2) UNREGULATED CUSTODY TRANSFER. — The term 'unregulated custody transfer' means the abandonment of a child, by the child's parent, legal guardian, or a person or entity acting on behalf, and with the consent, of such parent or guardian—

(A) by placing a child with a person who is not—

112. See Stronger Child Abuse Prevention and Treatment Act, H.R. 2480, 116th Congress (2019).

113. See *id.* § 202.

- (i) the child’s parent, step–parent, grandparent, adult sibling, legal guardian, or other adult relative;
 - (ii) a friend of the family who is an adult and with whom the child is familiar; or
 - (iii) a member of the Federally recognized Indian tribe of which the child is also a member;
- (B) with the intent of severing the relationship between the child and the parent or guardian of such child; and
- (C) without—
- (i) reasonably ensuring the safety of the child and permanency of the placement of the child, including by conducting an official home study, background check, and supervision; and
 - (ii) transferring the legal rights and responsibilities of parenthood or guardianship under applicable Federal and State law to a person described in subparagraph (A).¹¹⁴

In addition to recognizing that unregulated custody transfers especially affect adopted children, the current version of SCAPTA would require the Secretary of Health and Human Services to provide a report on unregulated custody transfers, which would detail measures “for preventing, identifying, and responding to unregulated custody transfers, including of adopted children, that include – amendments to Federal and State law to address unregulated custody transfers; amendments to child protection practices to address unregulated custody transfers; and methods of providing the public information regarding . . . child protection.”¹¹⁵

SCAPTA would also require the Secretary of Health and Human Services to “issue guidance and technical assistance to States related to preventing, identifying, and responding to unregulated custody transfers, including of adopted children.”¹¹⁶ This assistance would include, among other things, education materials and guidance on pre-adoption education and post-adoption services.¹¹⁷

CAPTA currently provides federal funds “to states in support of prevention, assessment, investigation, prosecution, and treatment activities and also provides grants to public agencies and nonprofit organizations . . . for demonstration programs and projects.”¹¹⁸ As opposed to previous reactionary efforts to combat child abuse and neglect, CAPTA shifted the focus to prevention and detection of

114. *See id.* § 202(d).

115. *See id.* § 202(b)(2) (alteration in original).

116. *See id.* § 202(c).

117. *See id.* § 202(c)(2)(A)–(B).

118. *About CAPTA: A Legislative History*, CHILD WELFARE INFO. GATEWAY 1 (Feb. 2019), <https://www.childwelfare.gov/pubPDFs/about.pdf> [<https://perma.cc/NM6C-A7WL>].

risk.¹¹⁹ This same model could be employed in the unregulated custody transfer context through legislation that is enacted subsequent to the passage of SCAPTA.

As mentioned above, the key to CAPTA's success in coordination of state and federal efforts to end child abuse and neglect through preventative measures lies in the distribution of grant funding based on states' compliance with the aims of CAPTA and ongoing monitoring of its state programs' effectiveness. This same model should be employed in the legislation resulting from SCAPTA, with the exception that the initial state request for grant funding should not require the level of detail regarding the statistics of unregulated custody transfer that CAPTA requires for child abuse and neglect.

Right now, tracking unregulated custody transfer is virtually impossible for states.¹²⁰ However, legislation that results from the implementation of SCAPTA should be seen as working in tandem with the proposed amendments to IAA and UAA. Specifically, because the amendments to the IAA and UAA would require a post-adoption reporting system, a more closely monitored power-of-attorney process, and separate family check-ins with adoption service providers, each state would be able to look to these reporting systems to document the existence of unregulated custody transfer within its borders.

The aims of SCAPTA should be similar to those of CAPTA in that the funding should be used for providing counseling services for families, exploring short-term respite services for families, and utilizing the skills of health care professionals to monitor the overall wellbeing of children within their programs.¹²¹ These programs will be significant, especially since the Convention only requires ten hours of pre-adoptive training.¹²² These services can provide an invaluable outlet to families who are seeking to adopt internationally.

IV. ALTERNATIVES

Other articles have advocated an exclusive state regulation regime, further criminalization of unregulated custody transfer, use of the ICPC, and new federal statutes, among other possible solutions, in order to combat the process of unregulated custody transfer.¹²³ However, these measures ultimately fall short for several reasons.

119. *See id.*

120. *See* Twohey, *supra* note 4.

121. *See* Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5116(a) (2012).

122. *Preadoption Training*, *supra* note 34.

123. *See* Aune, *supra* note 87 (arguing that unregulated custody transfer should be included within the definition of illegal adoption or human trafficking under the Child Rights Convention); Cynthia Hawkins Debose & Alicia Renee Tarrant, *Child Sex Trafficking and Adoption Re-Homing; America's 21st Century Salacious Secret*, 7 WAKE FOREST J.L. & POL'Y 487 (2017) (discussing human trafficking in the context of unregulated custody transfer and the possibility of a safe harbor provision for child victims of human trafficking); Martin, *supra* note 40 (supporting criminalization of unregulated custody transfer).

First, as of October 2017, which is the latest date for which data is available, thirty-seven states do not consider unregulated custody transfer a criminal act.¹²⁴ Moreover, the implementation of the ICPC has proven the difficulty of establishing uniformity in treatment of behavior surrounding adoption and monitoring the transfer of children in an effective and timely manner.¹²⁵ Second, criminalization of unregulated custody transfer will only push the practice further underground or cause children to remain in homes where they are unloved and possibly neglected or abused.¹²⁶ Third, the ICPC has been ineffective in tracking the current load of adoption across state lines, and, even if the ICPC were effective, the ICPC reporting system only addresses transfers across state lines and is inapposite to many cases of unregulated custody transfer.¹²⁷ Thus, the proposed solutions are ultimately not as effective as the proposed coordinated effort suggested in this article.

CONCLUSION

Children like Quita travel thousands of miles with the understanding that they will find their forever home, but the current law does not address what happens when certain families no longer want adopted children as part of their forever family. The only way to effectively address this issue is to create international standards that trickle down to federal and state legislation. The method of combatting unregulated custody transfer should start with an optional protocol to the Convention and Toolkit amendments to bring more awareness to the issue in the meantime.

First, the ABA should put in place a new set of standards for attorneys in the international adoption context. Then, the IAA and UAA should be amended to implement this protocol. Moreover, the Senate should pass SCAPTA as soon as possible with the ultimate effect of treating unregulated custody transfers in a similar manner to abuse and neglect in CAPTA. While the proposed measures will require time to become effective, the resulting solutions will create a solid infrastructure for protecting children in the international adoption system and reinforce to the world the United States' commitment to protect internationally adopted children.

124. See CHILD WELFARE INFO. GATEWAY, *supra* note 2, at 2.

125. See Twohey, *supra* note 4.

126. See McIntyre, *supra* note 83.

127. See Twohey, *supra* note 4.