
From Orphan Trains to Underground Networks: The Need To Get on Board with Adoption Reform

*“Adoption history illustrates that public and private issues are inseparable. Ideas about blood and belonging, nature and nurture, needs and rights are not the exclusive products of individual choices and personal freedoms. They have been decisively shaped by law and public policy and cultural change, which in turn have altered Americans’ ordinary lives and the families in which they live and love.”*¹

I. INTRODUCTION

In 1851, Massachusetts passed the first modern adoption law that recognized adoption as a social welfare issue concerning the interests of children rather than adults.² The 1851 Adoption of Children Act is regarded as landmark legislation in child welfare law, directing the Judiciary to exercise discretion in the issuance of adoption decrees for the first time.³ Despite the establishment of the first American adoption laws, one of the most infamous practices in adoption history known as placing-out was just beginning, and by 1854, orphaned children from major east coast cities were being sent via locomotive on Orphan Trains to forty-seven states, Canada, and Mexico.⁴ When the children arrived in a new city, they were immediately displayed to allow

1. Ellen Herman, *Adoption History in Brief*, THE ADOPTION HIST. PROJECT (Feb. 24, 2012), <http://darkwing.uoregon.edu/~adoption/topics/adoptionhistbrief.htm>, archived at <http://perma.cc/JN91-693L>.

2. See *id.* (addressing delay of other nations’ adoption legislation). The early adoption efforts in the United States have been attributed to national traditions including immigration and democracy. See *id.* Other nations were slower to accept adoption legislation; for instance, England did not pass adoption legislation until 1926. See *id.*

3. See Massachusetts Adoption of Children Act, ch. 324 (1851) (establishing first child welfare laws using judicial discretion); Ellen Herman, *Timeline of Adoption History*, THE ADOPTION HIST. PROJECT (Feb. 24, 2012), <http://darkwing.uoregon.edu/~adoption/timeline.html>, archived at <http://perma.cc/4GPF-56U5> [hereinafter *Timeline*] (emphasizing decisions regarding adoption decrees reached entirely by judicial discretion). Today, conservative estimates have determined that two to four percent of families in the United States have adopted children, and a little over two percent of all children under eighteen in the United States have been adopted. See Ellen Herman, *Adoption Statistics*, THE ADOPTION HIST. PROJECT (Feb. 24, 2012), <http://darkwing.uoregon.edu/~adoption/topics/adoptionstatistics.htm>, archived at <http://perma.cc/F2XD-27PP> (noting statistics available from 2000 Census including category of first-time adopted son or daughter).

4. See Ellen Herman, *Orphan Trains*, THE ADOPTION HIST. PROJECT (Feb. 24, 2012), <http://darkwing.uoregon.edu/~adoption/topics/orphan.html>, archived at <http://perma.cc/TTF5-V9LB> [hereinafter *Orphan Trains*] (describing transportation of immigrant orphans to West Coast for use as farm hands and workers). As many as 250,000 children were transported west from 1854-1929 in the hopes that they would leave behind a depraved urban lifestyle and begin an Americanized life in an upstanding farming family. See *id.*

passersby to estimate the children's value as farm hands and servant workers.⁵ If a child was not chosen in one city, he or she would re-board the train and be taken to the next with the hope that he or she would be chosen for adoption there.⁶ While the initiative was meant to relocate children from depraved institutional existences to homes with upstanding farming families, the process was largely unregulated, and adoptive families were never vetted to ensure that children would be healthy and safe in their placement homes.⁷

It was not until 1917, when Minnesota passed the first law requiring home studies and social investigations on all individuals seeking to adopt, that child welfare reform began to take shape.⁸ In 1935, the Social Security Act (SSA) finally provided for an expansion of benefits to the child welfare system, which ultimately led to the inception of the foster care system.⁹ Unfortunately,

5. *See id.* (describing practices of orphan trains). While some poor parents could not afford to keep their children, their financial struggles did not mean that parents intended to lose their children forever. *See id.* Research conducted by the Children's Aid Bureau has shown that most struggling parents, in fact, did not let their kids go for indefinite periods. *See id.* A few days in advance of a train's arrival, newspapers published notices announcing the children's impending arrival. *See id.* Moreover, a Children's Aid Society representative would visit beforehand to appoint three citizens from each town to lead the adoption process. *See* Ellen Herman, *Reverend Hastings H. Hart, "Placing Out Children in the West," 1884*, THE ADOPTION HIST. PROJECT (Feb. 24, 2012), http://darkwing.uoregon.edu/~adoption/archive/Hart_POCITW.htm, archived at <http://perma.cc/XF5E-8WWL>. In 1884, during a hearing before the Secretary of State Board of Corrections and Charities of Minnesota, Reverend Hart testified that forty children could be "disposed of" in just over three hours. *See id.*

6. *See Orphan Trains, supra* note 4 (describing boarding and relocation processes associated with Orphan Trains). The philosophy behind the "placing-out" project was that children of poor immigrants would have more opportunities and better lives if they were placed with successful Anglo-Protestant farming families in the west. *See id.*

7. *See id.* (contending primary goal of orphan trains to Americanize children of poor immigrants). Historians have determined that the large majority of orphan train children were shared or temporarily transferred and not given up. *See id.* Major findings, however, show that studies on temporary placements were either incomplete or were never conducted at all. *See* Ellen Herman, *Home Studies*, THE ADOPTION HIST. PROJECT (Feb. 24, 2012), <http://darkwing.uoregon.edu/~adoption/topics/homestudies.htm>, archived at <http://perma.cc/K243-VUQG> [hereinafter *Home Studies*] (explaining children often casually placed and mistreated in cruel environments).

8. *See Timeline, supra* note 3 (addressing formation of board of control created to investigate whether adoptive home suitable). Despite statutes requiring investigations, home studies were not mandated prior to placements, which made relocating children after poor placements difficult. *See Home Studies, supra* note 7. The earliest investigations evaluated foster parents based on fixed standards, including distance to church and school, refrigeration in the home, and a mother's cooking and housekeeping skills. *See id.* Over the course of the progressive era, home studies became less concerned with fixed standards and increasingly focused on moral qualifications in a movement toward a more therapeutic approach to child placement. *See id.*

9. *See Timeline, supra* note 3 (summarizing SSA's provisions including aid to dependent children, crippled Children's programs, and child welfare). The SSA authorized the creation of the Aid for Dependent Children program that later became the Aid for Families with Dependent Children. *See* Ellen Herman, *Fostering and Foster Care*, THE ADOPTION HIST. PROJECT (Feb. 24, 2012), <http://pages.uoregon.edu/adoption/topics/fostering.htm>, archived at <http://perma.cc/6Y67-A2DV>. The program eventually provided funding for the more modern foster care system in the 1960s. *See id.* It was not until the 1950s that the majority of children were in foster care as opposed to institutional care, and it was not until the 1960s that children in adoptive placements outnumbered children in institutional care. *See* Ellen Herman, *Placing-Out*, THE ADOPTION HIST. PROJECT (Feb. 24, 2012), <http://darkwing.uoregon.edu/~adoption/topics/placingout.html>.

accurate historical adoption statistics from this time are unavailable.¹⁰ The only national reporting system in the United States existed from 1945-1975, and state reporting was not mandated and was only produced on a voluntary basis.¹¹

The legal and social spheres of adoption in the United States are still evolving today through recent legislation, social welfare policies, and programs focused on the institutional care of dependent children, but the tracking of adoptions still proves to be difficult.¹² While the recent boom of social media and networking has given adoption a new voice, it has also enabled an underground, online marketplace for children to flourish, free from government regulation.¹³ A *Facebook* spokeswoman claimed the activities occurring on its forum show “that the Internet is a reflection of society,” and individuals use *Facebook* “for all kinds of communications and to tackle all sorts of problems.”¹⁴ The Internet has become a preferred method of transacting business on a large scale, but sensitive adoption matters require regulation that the digital marketplace does not currently support.¹⁵

This Note will analyze whether current United States law is capable of resolving the emergence of an online, underground child network and its complex, inevitable issues.¹⁶ Part II.A of this Note will address the troubled history of adoption regulation in the United States and the government’s

archived at <http://perma.cc/5E8P-P9UG> (noting practical effects of placements after creation of foster care system).

10. See Ellen Herman, *Adoption History in Brief*, THE ADOPTION HIST. PROJECT (Feb. 24, 2012), <http://darkwing.uoregon.edu/~adoption/topics/adoptionhistbrief.htm>, archived at <http://perma.cc/JN9L-693L> (highlighting lack of federal database and reporting requirements, even today). The United States Census included an adopted son/daughter category for the first time in 2000. See *id.*

11. See Ellen Herman, *Adoption Statistics*, THE ADOPTION HIST. PROJECT (Feb. 24, 2012), <http://darkwing.uoregon.edu/~adoption/topics/adoptionstatistics.htm>, archived at <http://perma.cc/F2XD-27PP> (describing lack of national statistics database). While the Adoption and Safe Families Act of 1997 requires states to report public adoptions from the foster care system, the only statistics on private adoptions are computed from information collected by universities and private agencies. See *id.* (describing statistical disparity).

12. See Rebecca S. Trammell, *Orphan Train Myths and Legal Reality*, 5 MOD. AM. 3, 3 (2009) (describing evolution of legal and social views of children in America). The government, by failing to track adoptions following finalization, can never know how many adopted children ultimately enter the illegal black market. See Megan Twohey, *In a Shadowy Online Network, a Pedophile Takes Home a “Fun Boy,”* REUTERS (Sept. 9, 2013), <http://www.reuters.com/investigates/adoption/#article/part2>, archived at <http://perma.cc/CP3D-H2MF> (quoting poster referencing forums as “‘farms’ in which to select children”).

13. See Megan Twohey, *Americans Use the Internet To Abandon Children Adopted from Overseas*, REUTERS (Sept. 9, 2013), <http://www.reuters.com/investigates/adoption/#article/part1>, archived at <http://perma.cc/M474-ULCL> (investigating online network of parents using online forums to illegally transfer children).

14. See *id.* (recognizing complex issues like adoption can now be resolved online).

15. See *id.* (finding *Yahoo!* bulletin board “Adoption-from-Disruption” operated for six years prior to investigation). *Yahoo!* shut down the bulletin board and five others once it became aware of the results of the Reuter’s investigation. See *id.*

16. See *infra* Part III (analyzing whether United States law can handle resolving online network of child adoption).

attempts, at both the state and federal level, to reform laws and implement procedures to protect the interests of dependent children throughout the country.¹⁷ Part II.B will look further at the problems prohibiting the success of child welfare programs nationwide, including the lack of sufficient statistics and research, the obstacles faced when engaging in legal adoption and the flawed government efforts exemplified through failing legislation.¹⁸ Part II.C will discuss the new technological dangers posed to child welfare, including the emergence of an underground child network.¹⁹ Part III will analyze the history of legislative and administrative attempts to address child welfare issues, suggest why attempts to ameliorate problems have failed, discuss new threats posed to child welfare reform, and propose changes to remedy the problems currently plaguing adoption and its underground network.²⁰ Part IV will conclude by arguing that uniform legislation and national reform of child welfare law must be implemented now to protect the children and families involved in adoption.²¹

II. HISTORY

A. *Evolution of Adoption: Roman Rule to Modern Day*

1. *Historical Background*

The practice of adoption is rooted in ancient civilizations, and while the majority of American law is derived from the English Common Law, American adoption law is derived from Roman law.²² Under Roman law, adoptive children were severed from their birth families, and the child's best interests were of little concern to the parties finalizing the adoption arrangements.²³ The primary concern in a roman-style adoption was maintaining the well-being and stability of the adoptive family, rather than ensuring a smooth and safe transition for the child.²⁴ Modern American adoption law, on the other hand, is revolutionary in that the best interests of adoptees are of paramount concern.²⁵

17. See *infra* Part II.A (addressing history of adoption regulation on state and federal levels).

18. See *infra* Part II.B (detailing problems preventing successful child welfare programs around country).

19. See *infra* Part II.C (discussing new dangers threatening child welfare system posed by technology and emergence of underground network).

20. See *infra* Part III (analyzing history of legislative and administration efforts and proposing changes to remedy problems facing system).

21. See *infra* Part IV (arguing for uniformity of law in effort to protect adoptive children and families).

22. See Lisa J. Trembly, Note, *Untangling the Adoption Web: New Jersey's Move To Legitimize Independent Adoptions*, 18 SETON HALL LEGIS. J. 371, 376 n.29 (1993) (noting adoption has roots in ancient civilizations but first captured in Roman law).

23. See *id.* (establishing primary focus of Roman adoption as continuity of adoptive family).

24. See *id.* at 376-77 (highlighting subordination of rights of adoptive child and birth parents).

25. See *id.* at 377 (acknowledging American adoption law's primary concern for forgotten and neglected children).

Looking back to the mid-1800s, initial child welfare statutes in the United States did not concern the best interests of the child.²⁶ From 1850-1914, New York City and Boston became the epicenters for child welfare efforts in the United States due to the overcrowding of impoverished immigrants and the great influx of destitute children.²⁷ Various charities and religious organizations opened facilities for vagrant children, but such organizations were not always safe havens.²⁸ Perhaps most notably, one such facility was built on Riker's Island in New York and close to ninety percent of the children housed there died during their stay.²⁹

In an effort to reconcile this atrocity, Orphan Trains—the mass transit of orphan children—were established.³⁰ The Orphan Train effort eventually led to the relocation of 150,000 children from public institutions to private, rural homes across the United States.³¹ Orphaned children boarded the trains in New York City and exited at various stops across the country to perform song and dance routines for an audience of prospective adoptive parents.³² Each child wore a placard around his or her neck that served as the contract for the child's adoption between the adoptive parent and the Children's Aid Society if the

26. See Amanda C. Pustilnik, *Private Ordering, Legal Ordering, and the Getting of Children: A Counterhistory of Adoption Law*, 20 YALE L. & POL'Y REV. 263, 281-83 (2002) (describing concentration of orphaned children sparked first large scale child welfare effort).

27. See *id.* at 283 (describing three major waves of immigration from 1800s-1914 resulting in concentrations of destitute children). The two major cities faced with this problem, New York and Boston, first developed almshouses, and later opened more modern facilities to house the poor. See *id.* at 283. The cities modeled these provisions after the English Poor Laws, which provided a system of relief in England to the poor. See *id.* at 283.

28. See Pustilnik, *supra* note 26, at 283 (describing dangers associated with child welfare in late 1800s and early 1900s).

29. See *id.* (maintaining early attempts at reform not model child welfare program). The concentrations of vagrant children in these cities provided for later attempts at addressing child welfare law and adoption. See *id.* at 284.

30. See *id.* at 284 (describing efforts of Children's Aid Society credited with widespread use of Orphan Trains).

31. See *id.* (stating authorities categorized placement with rural families as superior to institutionalization). The original effort to relocate children to rural areas began in Boston through a religious group known as the Children's Mission, and the later infamous Orphan Trains were modeled after this initiative. See *id.* The Orphan Train transfers were contractual, informal, and did not operate as an effect of government intervention, statute, or court proceeding. See *id.* The Orphan Trains continued until 1927, but no judicial authority ever legitimized the program. See *id.*

32. See Pustilnik, *supra* note 26, at 285 (depicting children's behavior in effort to attract adoptive parents). Reports indicate that the shows put on by children would include song and dance routines with pleas, including, "Please will you be my Daddy?" or "Please can I be your little boy [or] girl?" See *id.* Some children were party to pre-arranged adoptions, whereby adoptive parents would send descriptions of their ideal child to the child welfare institutions; if the institution found a suitable match, they would mail back a receipt indicating the day and time the child would arrive on the train. See Trammell, *supra* note 12, at 5 (describing process whereby families matched receipts to children's numbers on trains to fulfill requests). Requests would typically outline ideal age and physical requirements for farm hands needed to work recently purchased land in the West. See *id.* (describing pairing process for Orphan Train adoptions).

child was chosen for adoption.³³ While some adoption statutes were in effect during the time the Orphan Trains program took place, official legislation was mostly disregarded and few adoptions were legally formalized.³⁴

2. *The Rise of Child Welfare Legislation*

The federal government first began regulating child welfare in 1935 by providing grants for state foster care systems through the Child Welfare Services Program, or Title IV-B, of the Social Security Act.³⁵ The Adoption Assistance and Child Welfare Act of 1980 eventually amended the program and required federal departments to issue or amend federal legislation and policy, thereby triggering a state legislative response.³⁶ Today, federal legislation sets forth the guidelines for adoption in the United States; to receive federal funding, each state must pass legislation in compliance with established federal guidelines.³⁷ The regulation of adoption, however, still varies greatly

33. See Pustilnik, *supra* note 26, at 285 (describing placard as two-sided card that parties to adoption would sign to sanctify adoption). For most Children's Aid Society adoptions, placards served as the entire contract and transfer of rights to the child. See *id.*

Contracts were an integral part of the placement of the children. As the orphan trains stopped in various towns, the children disembarked and put on 'shows' to attract the attention of prospective adoptive parents. Although these shows might strike a modern observer as 'revolting' or 'deplorable,' they . . . served to create awareness in the communities and interest in adopting the children.

Id. at 283.

34. See *id.* at 286-87 (estimating fewer than thirty thousand adoptions formalized under statute). Any statutes in effect during the Children's Aid Society's reign were largely irrelevant because adoptions were treated as private contractual transactions. See *id.* (describing adoptions as "privately-ordered transaction[s]"). Approximately 120,000 adoptions reportedly occurred during this time. See *id.* at 287 (explaining adoption practices in private context). Orphan Trains halted in 1929 when the railroads in the United States were completed and child laborers were generally no longer needed to settle the frontier. See Trammell, *supra* note 12, at 6 (recounting end of Orphan Trains). Railroad companies stopped subsidizing fares to charities transporting children because railroad expansion was complete, and the West was largely considered civilized by 1929. See *id.* (describing national factors leading to end of Orphan Trains).

35. 42 U.S.C. §§ 621-629 (2012) (establishing Child Welfare Program as Title IV-B of Social Security Act); see also CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH AND HUM. SERV., MAJOR FEDERAL LEGISLATION CONCERNED WITH CHILD PROTECTION, CHILD WELFARE, AND ADOPTION 1-2 n.1 (Apr. 2012), <https://www.childwelfare.gov/pubs/otherpubs/majorfedlegis.pdf>, archived at <http://perma.cc/LY3H-GAWM> [hereinafter MAJOR FEDERAL LEGISLATION] (addressing first federal initiatives to implement prevention and protection services in foster care system).

36. See MAJOR FEDERAL LEGISLATION, *supra* note 35, at 21 (creating program to assist needy and dependent children through adoption assistance payments). Adoption assistance payments consider the circumstances of both adoptive parents and children with specific provisions for children with special needs. See *id.* (describing purpose of adoption assistance amendment). Children with special needs include kids who cannot return to their parents, have a condition requiring assistance and care, or are unable to be placed without assistance. See *id.* (describing adoption assistance act's special needs category of children).

37. See CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH AND HUM. SERV., LAWS RELATED TO ADOPTION (2012), <https://www.childwelfare.gov/adoption/laws/>, archived at <http://perma.cc/85TV-SAQT> [hereinafter LAWS RELATED TO ADOPTION] (describing framework of adoption law in the United States).

from state to state.³⁸ Titles IV-C and IV-E of the Social Security Act authorize the largest federally funded adoption programs that are administered by the United States Department of Health and Human Services.³⁹ Federally funded programs include Child Welfare Services, the Promoting Safe and Stable Families Program, the Foster Care Program, the Adoption Assistance Program, and the Chafee Foster Care Independence Program.⁴⁰ Important Federal Child Welfare Legislation includes the Child Abuse Prevention and Treatment Act, the Adoption and Safe Families Act, the Safe and Timely Interstate Placement of Foster Children Act, and the Adam Walsh Child Protection and Safety Act.⁴¹

a. The Child Abuse Prevention and Treatment Act

The Child Abuse Prevention and Treatment Act (CAPTA) is the key federal legislation addressing child abuse and neglect.⁴² The Act provides federal funding to states in support of prevention, assessment, investigation, and prosecution of child abuse and neglect, while also providing grants to public agencies and nonprofit organizations.⁴³ CAPTA was most recently amended and reauthorized on December 20, 2010 by the CAPTA Reauthorization Act of 2010, which establishes federal appropriations for adoptions in the United States through 2015.⁴⁴ CAPTA mandates that state legislation meet minimum requirements as outlined in the act to receive federal funding.⁴⁵ CAPTA requires, among other things, that states demonstrate cooperation with law enforcement, maintain a reporting system for cases of abuse and neglect, and allocate sufficient resources to deal with reports of abuse and neglect.⁴⁶ While nearly every state receives CAPTA funding, there is, unfortunately, no

38. *See id.* (addressing disparities among state laws resulting from loose federal framework).

39. *See id.* at 2 (describing administration and funding of Federal Child Welfare Programs). Congress has implemented much legislation that impacts and requires state legislative response. *See id.* Federal legislation often reforms state agencies, requires state action in order to receive funding, and may require federal agency oversight. *See id.*

40. *See id.* (detailing largest federally-funded programs).

41. *See LAWS RELATED TO ADOPTION, supra* note 37 (discussing critical child welfare legislation).

42. *See id.* (describing act significance).

43. *See id.* (explaining purview of act); *see also* CAPTA Reauthorization Act of 2010, 42 U.S.C. § 5101 (2012) (authorizing funding grants to states, public agencies, and nonprofits).

44. *See* CAPTA Reauthorization Act of 2010, Pub. L. No. 111-320, 124 Stat. 3459 (2012) (reauthorizing appropriations through 2015); *see also* MAJOR FEDERAL LEGISLATION, *supra* note 35, at 5-6 (detailing major provisions of act).

45. *See* MAJOR FEDERAL LEGISLATION, *supra* note 35, at 5-6 (explaining state requirements for funding).

46. *See id.* (listing key requirements of states); Gerard F. Glynn, *The Child's Representation Under CAPTA: It is Time for Enforcement*, 6 NEV. L.J. 1250, 1251-53 (2006) (highlighting requirements for federal funding). CAPTA is a major source of funding for most states, but there is no proof that states are complying with its mandates. *See id.* at 1253 n.14 (explaining forty-eight states, the District of Columbia, and Puerto Rico received CAPTA funding in 2006). CAPTA also authorizes grants to public and private agencies to encourage collaboration with child protective services agencies. *See id.* at 1251-52. Moreover, CAPTA requires that states amend plans to include laws concerning mandated reporting, screening and assessment procedures. *See id.*

monitoring system in place to ensure state compliance with the mandate; thus, there is no effective enforcement mechanism to carry out the provisions of CAPTA.⁴⁷

b. The Adoption and Safe Families Act

The Adoption and Safe Families Act (ASFA) was passed in 1997 to amend title IV-E of the Social Security Act.⁴⁸ The goal of ASFA was to accelerate the adoption of children from foster care programs and to ensure the safety of abused and neglected children.⁴⁹ ASFA aimed to increase state accountability through requiring the documentation of state efforts to transfer children from foster care to permanent placements in adoptive homes as efficiently as possible.⁵⁰ ASFA improved the 1994 amendments to the Social Security Act, which created the Child and Family Service Review System, because ASFA mandates that states submit qualitative and quantitative reports on state adoption practices to the Federal Government and penalizes noncompliant states by requiring them to submit action plans to improve deficient reporting practices.⁵¹

c. The Safe and Timely Interstate Placement of Foster Children Act

The next substantial federal legislation regarding child welfare was the Safe and Timely Interstate Placement of Foster Children Act (STIPFCA) passed in 2006.⁵² STIPFCA was intended to further improve protections for children and

47. See Glynn, *supra* note 46, at 1253 n.14 (explaining newer foster care legislation does have mechanism). The penalty for most federal spending statutes is denied funding to states failing to comply with federal statutory requirements. See *id.* at 1257. Few advocate for denied funding, however, because the result of less funds at a state level might aggravate an already dire situation for needy children. See *id.*

48. See Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997) (describing new act guidelines); MAJOR FEDERAL LEGISLATION, *supra* note 35, at 17 (outlining major Act provisions United States Department of Health and Human Services set forth).

49. See MAJOR FEDERAL LEGISLATION, *supra* note 35, at 17 (exploring goals of act). ASFA aimed to ensure that health and safety concerns were met on the state level at the time of child placement in adoption proceedings. See *id.* Additionally, ASFA required that the states' health and human services department report the scope of substance abuse in their child welfare population and the outcomes of treatment provided to the families. See *id.* ASFA also mandated criminal background checks for parents receiving federal funds and required states to make a child eligible for adoption after spending a period of time in foster care. See *id.*

50. See Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997) (increasing responsibilities of states); MAJOR FEDERAL LEGISLATION, *supra* note 35, at 17. ASFA clarified that "reasonable efforts" by the state included an emphasis on children's health and safety and specified situations in which prevention of foster placement and family reunification is not required. See MAJOR FEDERAL LEGISLATION, *supra* note 35, at 17 (requiring permanency hearings no later than one year after child enters foster care).

51. See Glynn, *supra* note 46, at 1253 n.14 (describing penalties for noncompliance and drawbacks of withholding funding). Unfortunately, after the first round of assessments no state passed the federal reviews, yet no penalties were imposed. See *id.*

52. See Safe and Timely Interstate Placement of Foster Children Act of 2006, Pub. L. No. 109-239, 120 Stat. 508 (2006) (placing children across state lines safely and effectively).

hold states accountable for the safe and timely placement of children across state lines.⁵³ STIPFCA specifically required that states complete home studies requested by another state within a designated period.⁵⁴

d. The Adam Walsh Child Protection and Safety Act

Following STIPFCA in 2006, Congress passed the Adam Walsh Child Protection and Safety Act in an effort to protect children from sex offenders and online predators.⁵⁵ The Adam Walsh Child Protection and Safety Act mandated fingerprint background investigations of prospective foster and adoptive parents and eliminated state exceptions to background investigation requirements.⁵⁶ Additionally, the Adam Walsh Child Protection and Safety Act focused, for the first time, on forming a centralized federal reporting system that directed the Secretary of Health and Human Services to develop a national registry to track child abuse and neglect cases.⁵⁷

B. Problems Currently Plaguing Child Welfare Throughout the United States

1. Absence of Accurate and Available Statistics and Data

The lack of systematic reporting on adoption data continues to slow child welfare progress despite ample federal legislation focused on improving child welfare law.⁵⁸ The number of private domestic adoptions is not collected or

53. *See id.* § 2(4) (listing “safe and expedited placement of children” as goal). STIPFCA authorized increased frequency of caseworker visits for children in out-of-state placements without imposing restrictions on the state’s ability to contract with private caseworkers to perform the visits. *See id.* § 3(26)(c) (highlighting Act’s key provisions).

54. *See* MAJOR FEDERAL LEGISLATION, *supra* note 35, at 11-12 (describing standards for state plan exchanges). STIPFCA also authorized grants to fund home studies in states that complete studies within thirty days, and increased frequency of case worker visits to children placed out of state. *See id.* The primary goal of the legislation was to ease the burden of legal barriers created by interstate placement of children. *See id.*

55. *See* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 102, 120 Stat. 587 (2006) (declaring purpose to protect children from sex offenders). The Adam Walsh Child Protection and Safety Act also requires that every state comply with requests from other states for information from an abuse registry. *See id.*

56. *See id.* § 152 (requiring state compliance with background investigations and attorney generals compliance with child welfare agencies).

57. *See id.* § 143 (establishing additional standards for protecting and distributing information on child abuse and neglect). The Secretary of Health and Human Services would establish a registry to document substantiated cases of child abuse or neglect and set the standards for access to such information. *See id.* States would be responsible for implementing methods to protect information in their own databases and would need to ensure the data would only be utilized to determine foster or adoptive placements. *See id.*

58. *See* EVAN B. DONALDSON ADOPTION INST., WHAT’S WORKING FOR CHILDREN: A POLICY STUDY OF ADOPTION STABILITY AND TERMINATION 3, 35 (Nov. 2004), http://www.adoptioninstitute.org/old/publications/Disruption_Report.pdf, archived at <http://perma.cc/23EG-Z7TT> [hereinafter WHAT’S WORKING FOR CHILDREN] (researching policies regarding adoption disruption and termination); Kathy S. Stolley, *Statistics on Adoption in the United States*, 3 THE FUTURE OF CHILD 26, 26-28 (1993), available at http://www.princeton.edu/futureofchildren/publications/docs/03_01_02.PDF, archived at <http://perma.cc/9NWE-AHFW> (describing limitations created and perpetuated by lack of data).

reported, and children can be abused and neglected long after they are privately adopted into presumably safe, permanent homes.⁵⁹ States are not legally required to report later cases of abuse or simple domestic adoptions and, as a result, federal regulation can't review these practices.⁶⁰ All states allow state-licensed private agencies to place children with adoptive parents, and nearly every state permits independent adoptions whereby both parents directly place children with adoptive parents.⁶¹ An inaccurate body of statistics contributes to this confusion because much of the identifiable information that could be used to track adoptions is often changed upon the finalization of the adoption.⁶²

2. *Deterrents to Traditional Adoption*

The screening process for prospective adoptive parents is demanding, expensive, and competitive; this reality certainly entices some parents to circumvent the regulated system and pursue independent, unregulated adoptions.⁶³ Adoptions can cost as much as \$20,000, and the background investigations required to vet prospective parents are extremely thorough.⁶⁴ Adoptions occurring across state lines are even more difficult than intrastate adoptions because there is still a lack of uniformity among state law and little clarity as to which state law governs in the event of a dispute.⁶⁵ Further, due to the increasing rate of infertility and the decreasing number of children available for adoption, agencies often have years-long waiting lists, or are simply not

59. See *supra* note 58 and accompanying text (discussing barriers to advancement posed by insufficient body of adoption statistics). There are few ways to collect adoption information and the federal government does not require states to report domestic information to a centralized database. See WHAT'S WORKING FOR CHILDREN, *supra* note 58, at 26-28 (detailing frustrations created by inaccurate statistics and historical practices).

60. See WHAT'S WORKING FOR CHILDREN, *supra* note 58 (highlighting inefficacies of state reporting). Nearly every state allows independent adoptions where birth parents independently place their children with adoptive parents, and some states do not require counseling or home studies of adoptive parents before placement. See *id.*

61. See Stolley, *supra* note 58, at 27 (noting great discrepancies between states as to how adoptions are tracked and reported); Susan Scarf Merrell, *Adoption's Dirty Secret*, THE DAILY BEAST (Apr. 17, 2010), <http://www.thedailybeast.com/articles/2010/04/17/adoptions-dirty-secret.html>, archived at <http://perma.cc/G833-JGTK> (suggesting streamlining of statistics to synchronize and improve system).

62. See Merrell, *supra* note 61 (noting once child's name changed, systems do not account for changes to track success); see also Meribah Knight, *Failed Adoptions Create More Homeless Youths*, N.Y. TIMES (Dec. 29, 2011), http://www.nytimes.com/2011/12/30/us/failed-adoptions-create-more-homeless-youths.html?pagewanted=all&_r=1&, archived at <http://perma.cc/Q32F-YFCT> (reporting child's name and birth certificate changed, prohibiting tracking thereafter).

63. See Trembly, *supra* note 22, at 402 (stating independent adoptions can cost between \$3,000 and \$10,000, while agency adoptions can cost \$20,000).

64. See *id.* at 373 (purporting extensive background checks required for approval of adoptive parents).

65. See Lisa M. Simpson, Article, *Adoption Law: It May Take a Village To Raise a Child, But it Takes National Uniformity To Adopt One*, 3 PHOENIX L. REV. 575, 576-78 (2010) (discussing difficulty of incompatible state laws resulting in different outcomes); see also Mary M. Beck, *Adoption of Children in Missouri*, 63 MO. L. REV. 423, 457-58 (1998) (advocating state action for comprehensive adoption law reform).

accepting new applicants.⁶⁶

Given the difficulties of agency adoption, parents often resort to desperate measures and seek options outside of traditional adoption methods, including participating in independent adoptions that involve an intermediary.⁶⁷ Forty-three states allow parents to place their children with adoptive parents through direct, private arrangements.⁶⁸ Even during an independent adoption, however, adoptive and birth parents must contract with attorneys to legalize the adoption and pay for the legal services rendered.⁶⁹ Independent adoptions are illegal in Massachusetts, Connecticut, Delaware, and Minnesota, and nine states reported that no independent adoptions took place in their jurisdiction in 2002.⁷⁰ Most states, however, have no method of tracking the various forms of adoptive activities that take place, so it is difficult to ascertain the true figures.⁷¹

3. *Interstate Compact on the Placement of Children*

The Interstate Compact on the Placement of Children (ICPC) is one potential safeguard against illegally exchanging children across state lines.⁷² The ICPC is an agreement between the fifty states, the U.S. Virgin Islands, and the District of Columbia, which is codified in statutes giving it the force of law.⁷³

66. See Trembly, *supra* note 22, at 372-74 (discussing extensive waiting lists and high costs as deterrents to engaging in legal adoption).

67. See *id.* at 374 (detailing desperate measures of prospective parents). As a result of the strict guidelines, cost, and waiting periods associated with agency adoptions, some couples have resorted to independent adoptions and other more drastic measures. See *id.* (describing sacrifices parents will make for family). Independent adoptions often take between two months to two years, while waiting periods for agency adoptions can be anywhere from two to ten years. See *id.* at 397.

68. See Pustilnik, *supra* note 26, at 288 (confirming placements only require home study visit from social worker and court decree).

69. See *id.* at 400-01 (noting court-approved adoption fees used in some jurisdictions can prevent illegality).

70. See 1 JOAN H. HOLLINGER, ADOPTION LAW AND PRACTICE § 1.05[3], at 1-70 (2002) (exploring jurisdictional differences dealing with independent adoptions). Through independent adoptions, birth parents independently place their children with adoptive parents without involving an intermediary agency, but legally, attorneys are still required to finalize the adoption. See CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH AND HUM. SERV., ADOPTION OPTIONS: WHERE DO I START? FACTSHEET FOR FAMILIES (Aug. 2015), https://www.childwelfare.gov/pubpdfs/f_adoptoption.pdf, archived at <http://perma.cc/SXR2-59XJ> (diagramming and describing potential paths for adoption).

71. See Melinda Lucas, Note, *Adoption: Distinguishing Between Gray Market and Black Market Activities*, 34 FAM. L.Q. 553, 559 (2000) (discussing difficulty in obtaining accurate adoption statistics). The remaining forty-six states attempt to distinguish gray market adoptions without an intermediary from black market illegal adoptions for profit, by enacting statutory control over the following elements: "(1) advertising, (2) methods of obtaining birth parent consent, (3) payments adoptive parents make to birth parents, and (4) fees intermediaries charge adoptive parents." *Id.*

72. See Twohey, *supra* note 13 (noting potential of ICPC). The New York Court of Appeals stated the compact's goal was to prevent states from "unilaterally dumping" their foster care obligations on states without a reliable chain of custody. See 3 NY FAM. CT. LAW & PRAC. *Interstate Compact on Placement of Children* § 15:9, Westlaw (database updated July 2015)

73. See Twohey, *supra* note 13 (discussing parameters of compact as both safeguard for children and vetting process for prospective parents).

The compact requires that parents notify authorities in both states when children are transferred across state lines to someone outside the family in a different state.⁷⁴ While every state has codified this compact, the ICPC is largely unknown to law enforcement and is rarely enforced.⁷⁵

Under the ICPC, the child welfare agency in the receiving state has sole authority to govern and authorize child placement.⁷⁶ Unfortunately, the statute offers little to no guidance for the social workers tasked with making such determinations, and social workers can inevitably be influenced by their own personal biases.⁷⁷ While legislatures across several states have begun reforming the ICPC, there is still no apparent effort to implement judicial oversight to aid and monitor child welfare agencies as they make determinations.⁷⁸

C. The Dangers of Technology: An Underground Child Network in the United States

1. The Network

In 2013, a Reuters investigation revealed an underground, online adoption network where parents arranged for their children to be adopted by prospective

74. *See id.* (describing compact's specific safeguards).

75. *See id.* (explaining compact has force of law but lack of awareness precludes enforcement). Sanctions for violating the compact are determined and enforced by each state. *See id.* The range of penalties among states varies from no penalty, to misdemeanor charges, to violations. *See id.* The compact's lack of recommendations for state sanctions is flawed. Madelyn D. Freundlich, *Reforming the Interstate Compact on the Placement of Children: A New Framework for Interstate Adoption*, 4 U. PA. J.L. & SOC. CHANGE 15, 48 (1997), available at [https://www.law.upenn.edu/journals/jlasc/articles/volume4/issue1/Freundlich4U.Pa.J.L.&Soc.Change15\(1997\).pdf](https://www.law.upenn.edu/journals/jlasc/articles/volume4/issue1/Freundlich4U.Pa.J.L.&Soc.Change15(1997).pdf), archived at <https://perma.cc/MU75-4L6N> (emphasizing confusion among states and courts as to appropriate sanctions).

76. *See* Vivek Sankaran, *Perpetuating the Impermanence of Foster Children: A Critical Analysis of Efforts To Reform the Interstate Compact on the Placement of Children*, 40 FAM. L.Q. 435, 446 (2006) (discussing state authorization of child placements under ICPC). Not only is the receiving state the party with sole control over whether the placement takes place, but the case worker's discretionary assessment is the only basis for making the determination. *See id.* at 447. Furthermore, there is no appellate process to challenge denials. *See id.* at 447.

77. *See id.* at 446 (noting only standard set forth as "does not appear contrary to the interests" of child). The child's interests are not defined anywhere in the ICPC, and the standards used are different from state to state, are usually unwritten, and are largely influenced by caseworkers' personal biases. *See id.* If prospective parents cannot prove to a caseworker that the placement is not contrary to the child's interests, then the child will not be placed with parents solely based on an individual caseworker's assessment. *See id.* at 447. Further, maintaining an agency that is equipped to handle such matters requires substantial resources. *See* JEANNE A. HOWARD, EVAN B. DONALDSON, ADOPTION INST., UNTANGLING THE WEB: THE INTERNET'S TRANSFORMATIVE IMPACT ON ADOPTION 36 (Dec. 2012), http://adoptioninstitute.org/old/publications/2012_12_UntanglingtheWeb.pdf, archived at <http://perma.cc/YE56-USGE> (describing high costs of maintaining facility staffed with trained and experienced social workers).

78. *See* Vivek Sankaran, *Judicial Oversight Over the Interstate Placement of Foster Children: The Missing Element in Current Efforts To Reform the Interstate Compact on the Placement of Children*, 38 CAP. U. L. REV. 385, 386 (2009) (highlighting lack of enforcement for failure to comport with compact provisions). A component addressing judicial oversight has been absent from the ICPC since it was drafted in 1960. *See id.*

parents who responded to online adoption advertisements posted in a forum for disrupted adoptions.⁷⁹ This process, referred to as re-homing, is not acknowledged as a legitimate process by any state, federal, or international law.⁸⁰ Independently re-homing children allows parents to circumvent all legal authorities charged with overseeing adoption practices and allows children to be signed over to new parents through a simple power of attorney document.⁸¹

The Reuters investigation discovered that a girl named Quita was put up for adoption by her parents, the Puchallas, via an online posting.⁸² The Puchallas adopted Quita from Liberia two years earlier and took her to live with their family in Wisconsin.⁸³ At the time of the posting, the Puchallas believed Quita acted too violently around their other children and that there was no option but to give her up for adoption online.⁸⁴ The Easons, another couple from Illinois, responded to the posting, and Quita's parents drove six hours to leave her with them shortly after.⁸⁵ After the drop off, the Puchallas discovered Quita was not

79. See Twohey, *supra* note 13 (investigating forums seeking new homes for kids with descriptions of children from failed adoptions). The forums allow both current and prospective parents to communicate under the radar of authorities and to arrange for the transfer of unwanted children to new homes. See *id.* The practice of advertising children online is regulated, and approximately thirty states ban such advertising in certain instances. See CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH AND HUM. SERV., USE OF ADVERTISING AND FACILITATORS IN ADOPTIVE PLACEMENTS (Apr. 2012), https://www.childwelfare.gov/systemwide/laws_policies/statutes/advertising.pdf, archived at <http://perma.cc/CM5W-K82D> [hereinafter USE OF ADVERTISING]. Connecticut allows advertising by prospective and birth parents only, while thirteen other states—Florida, Indiana, Mississippi, Tennessee, Louisiana, Illinois, Nebraska, North Carolina, Kansas, Oklahoma, Oregon, Washington, and Washington—allow advertising by agencies, attorneys, and other entities. See *id.* Alabama and Kentucky prohibit all advertising, and eleven other states—California, Delaware, Idaho, Maine, Massachusetts, Montana, Nevada, New Hampshire, North Dakota, Ohio, and Texas—prohibit advertising by anyone other than the state social services department or a licensed agency. See *id.*

80. See Twohey, *supra* note 13 (reporting lack of legislation recognizing re-homing as legitimate practice). In light of the lack of regulation, the illegal online “adoption” route is available for those previously unable to adopt a child legally or those who have not attempted to adopt based on the small likelihood of surviving the vetting process. See *id.* Parents who regret adopting their children are also turning to online forums to seek out new homes for their unwanted children. See *id.* One parent advertised an adopted child who was present in the parent's home for five days. See *id.* The child was an eight-year-old girl from China, and the parent posted that they had been struggling, asking that viewers share the ad “with anyone you think may be interested.” *Id.* Reuters reviewed 5,029 postings in just one group on *Yahoo!* over a five-year period, and on average, one child was advertised per week, ranging in age from six to fourteen. *Id.* Some children rehomed through online forums have endured severe abuse. See *id.*

81. See Twohey, *supra* note 13 (reiterating ease of online illegal adoption process). Once the power of attorney is notarized, parents may enroll the child in school and secure government benefits. See *id.* If parents plan to move the child across state lines, authorities in both states must be notified, and failure to notify authorities directly violates the ICPC. See *id.* The investigation notes that the term re-homing is typically used in reference to finding a new home for a pet, and employing such a term is extremely troubling. See *id.*

82. See *id.* (summarizing discovery of online child network postings).

83. See *id.* (indicating Quita legally adopted internationally from Liberia).

84. See *id.* (describing how Quita's parent's found her new home online).

85. See Twohey, *supra* note 13 (reporting Puchallas left Quita with Nicole Eason, whose biological children were taken from her). The Puchallas drove six hours from their Wisconsin residence to the Easons' home in Illinois where they dropped Quita off in a mobile home park and signed a power of attorney document that was fewer than 400 words, resulting in an illegal adoption. See *id.*

attending school, and the Puchallas grew concerned, especially because they had not heard any updates from either their child or the Easons.⁸⁶ Upon discovering what had transpired, Reuters interviewed Quita's new adoptive mother and asked her what exactly re-homing was, to which she responded: "It's like, 'Hey, Can I have your baby?'"⁸⁷ Efforts are underway in many states to improve child welfare programs and prevent children from entering dangerous and abusive situations; one comprehensive initiative in Colorado is hopeful that additional funding, improved technology, and caseworker auditing will help improve child welfare in their state.⁸⁸

2. *Specific Internet Dangers*

Adoption disruption is the term used to describe an adoption that ends after a child is placed in an adoptive home, but before the adoption is legally finalized.⁸⁹ Adoption dissolution is the term generally used to describe an adoption in which the legal relationship between the adoptive parents and adoptive child is severed, either voluntarily or involuntarily, after the adoption is legally finalized.⁹⁰ Generally, this results in the child's return to the foster care system or to new adoptive parents.⁹¹ The most recent practice of finding

86. *See id.* (explaining Easons' failure to enroll Quita in school and decision to take her to New York). Child welfare authorities discovered that the Easons had forged a home study to the Puchallas and had left with Quita to New York. *See id.*

87. *See id.* (describing Quita's journey).

88. *See* Jordan Steffen et al., *Colorado Announces Sweeping Reforms to Child Welfare System*, THE DENV. POST (Feb. 6, 2013), http://www.denverpost.com/ci_22533149/colorado-announces-sweeping-reforms-child-welfare-system, archived at <http://perma.cc/28S7-84XT> (detailing Colorado reform efforts to repair broken child welfare system in state).

89. *See* CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH AND HUM. SERV., ADOPTION DISRUPTION AND DISSOLUTION (June 2012), https://www.childwelfare.gov/pubs/s_disrup.pdf, archived at <https://perma.cc/TV4V-GCX7> [hereinafter ADOPTION DISRUPTION DISSOLUTION] (explaining disruption results in adoption falling through before finalization); *see also* Child Welfare Info. Gateway, *Adoption Disruption and Dissolution*, 31 NO. 12 CHILD. L. PRAC. 158, 158 (2012) [hereinafter *Adoption Disruption Dissolution*] (defining adoption disruption). Adoption disruption results in the child's return to the foster care system, entry into the foster care system for the first time, or placement with new adoptive parents. *See Adoption Disruption Dissolution, supra*.

90. *See* ADOPTION DISRUPTION DISSOLUTION, *supra* note 89 (describes dissolution as falling through of adoption after finalization); *Adoption Disruption Dissolution, supra* note 89, at 158 (defining adoption dissolution). Individual studies of United States populations indicate that approximately ten to twenty-five percent of adoptions disrupt. *See Adoption Disruption Dissolution, supra* note 89, at 158. Due to privacy and information protections, data on the number of adoptions that dissolve is much more difficult to ascertain. *See id.* Child factors that seem to lead to adoption disruption include a child's older age, the presence of emotional and behavioral issues, strong attachment to the child's birth mother, and any history of sexual abuse. *See id.* Family factors that seem to increase the rate of adoption disruption include: acting as a newly matched parent as opposed to holding any experience as a previous foster parent, having unrealistic expectations of the child, and possessing a lack of support system from family members. *See id.* Agency factors that seem to increase the chance of adoption disruption include inadequate information about the child, inadequate parental education and training, staff turnover, and insufficient resources and services. *See id.*

91. *See Adoption Disruption and Dissolution, supra* note 89, at 158-59 (addressing results of adoption disruption and dissolution). Currently, national studies on adoption disruption or dissolution are non-existent.

new adoptive parents for a child online, without the oversight of child welfare authorities, has unearthed the startling reality that children are perhaps more vulnerable in adoption transactions than ever.⁹² Specifically, the emergence of online adoption forums on platforms like *Facebook* and *Yahoo!* has created a marketplace where prospective parents can access children under the radar of the regulatory agencies, placing already vulnerable children in grave danger.⁹³

The Internet has established itself as an incredible advertising and marketing tool, but has simultaneously enabled those wishing to circumvent the law to easily transact their business.⁹⁴ State laws range greatly: from those jurisdictions where adoption advertising is explicitly banned in both print and electronic media, to states that allow licensed agencies, attorneys, professionals, and even birth parents to advertise for adoption purposes.⁹⁵

See id. Losing his parents twice before age eighteen, Lamar West is one of many homeless youths whose parents abandoned him once he reached the age of majority, typically when parents lose government funding. *See Knight, supra* note 62. Illinois has one of the largest child welfare systems in the country and is one example of a 1990s initiative that called for rapid adoption placements to benefit children and ease burden on state budgets. *See id.* The children placed during the late 1990s have reached the age of majority and, the government has terminated subsidies to their parents. *See id.* Sadly, often parents who are no longer receiving the funds that incentivized adoption in the first place, have little interest in maintaining a personal or financial relationship with the child. *See id.* In 2009, Illinois enacted a statute to aid foster youths until age twenty-one, but this act does not apply to youth adopted out of foster care. *See id.*; *see also* 20 ILL. COMP. STAT. 505/5 (2009); 05 ILL. COMP. STAT. 405/2-23 (2009); 705 ILL. COMP. STAT. 405/2-27 (2015); 705 ILL. COMP. STAT. 405/2-31 (2010); 705 ILL. COMP. STAT. 405/2-33 (2009).

92. *See Twohey, supra* note 13 (addressing lack of government regulation and oversight of private re-homing). The government has not taken steps to oversee private re-homing resulting from failed adoptions, and the only people scrutinizing potential parents are current parents who remain eager to get rid of their own children. *See id.* (highlighting ease of access to children for criminals, sex offenders, and child abusers).

93. *See id.* (describing risk to children transferred without government oversight or intervention). Through internet mediums, parents can interact directly with one another online and freely send their children to new homes. *See Mary Kate Kearney & Arrielle Millstein, Meeting the Challenges of Adoption in an Internet Age*, 41 CAP. U. L. REV. 237, 265-66 (2013). The Internet has not only changed how adoption advertising occurs but has also who posts advertisements. *See Michelle M. Hughes, Internet Promises, Scares, and Surprises: New Realities of Adoption*, 41 CAP. U. L. REV. 279, 281 (2013). The Internet has the ability to easily connect people looking to adopt with potential adoptees and, unfortunately, can also easily undermine protections traditionally afforded to adoption parties. *See id.* at 286. Compliance with governing regulations is increasingly difficult in the online world due to multi-jurisdictional dealings resulting from cyberspace. *See id.* at 287-88.

94. *See Hughes, supra* note 93, at 285-86 (admitting Internet not confined to any particular jurisdiction, making regulation difficult). The overwhelming use of the Internet throughout the adoption process has increased the potential for fraudulent dealings. *See id.* at 321. There is no reliable way to verify information transmitted over the Internet, and the harm inflicted upon parties involved in the adoption process is often both financial and emotional in nature. *See id.* It will continue to prove difficult to distinguish authentic postings from fraudulent scams until there is a sufficient mechanism in place to aid users in online research. *See id.* Currently, there is no national registry in existence to determine whether parties to an adoption are working with multiple families at once, or to verify the credentials of people purporting to be adoption professionals online. *See id.* at 321-22.

95. *See Hughes, supra* note 93, at 286-87 (noting online adoption advertising legal in Illinois but outlawed in Alabama); *see also* ALA. CODE § 26-10A-36 (1975); 225 ILL. COMP. STAT. 10/12 (2005). There is a dichotomy of adoption advertising regulation among states; some states' departments of health issue licenses to agencies while others require home studies of individuals before allowing advertising. *See Hughes, supra*

Variations in state legislation aside, the Internet is accessible from all jurisdictions, and regardless of where advertisements and forums originate, adoption messages have the ability to influence individuals everywhere.⁹⁶ The common use of the Internet throughout the adoption process has not only created fraudulent adoption schemes under the guise of legitimacy, but has allowed for the secretive exchange of children when both parties are willing to partake in an illegal dealing.⁹⁷ The Internet has become an effective medium for interstate adoptions and is unencumbered by jurisdictional constraints.⁹⁸ While legislation to protect children who use the Internet exists, action to guard against specific online advertising or exploitation of children has not been introduced.⁹⁹

III. ANALYSIS

A. *Effects of Inadequate and Inaccurate Statistics*

The lack of adequate statistics concerning adoption dissolution makes it difficult to pin down how many children in the United States face this fate each year.¹⁰⁰ While statistics on adoption disruption and dissolution are both hard to track, dissolution statistics prove particularly difficult to collect.¹⁰¹ Adoption dissolution, by definition, takes place after the adoption has been finalized, which means that records have been sealed and the child's name, social security number, and other identifying information may have been changed.¹⁰²

note 93, at 286-87. In other states, illegal adoption advertising offenses are still punishable as felonies with a fine of up to \$10,000, imprisonment of up to ten years, or both. *See id.*

96. *See Hughes, supra* note 93, at 287-88 (recognizing difficulties of enforcing governing regulations as Internet not confined by state borders).

97. *See id.* at 321 (discussing fraud as both emotional and financial detriment due to lack of reliable verification mechanism).

98. *See id.* at 288 (addressing intersection of jurisdictional constraints with federal laws, including ICPC). It is unclear how the court would rule on inconsistent adoption advertisement laws that have given rise to a conflict of laws debate in adoptions, as well as freedom of speech issues in the adoption realm. *See id.* Some guidance, however, as to how a court could view the issue is provided in *Bigelow v. Virginia*. *See* 421 U.S. 809, 817-24 (1975) (holding state could not prohibit abortion advertisements in state allowing abortions). The court in *Bigelow* held that the state could not regulate advertising activities in other states, employing a freedom of speech theory. *See id.*; *see also Hughes, supra* note 93, at 288 (predicting how courts could interpret one state prohibiting adoption advertising from another).

99. *See* Children's Online Privacy Protection Act of 1998 (COPPA), 15 U.S.C. § 6506 (1998); *see also* Kearney & Millstein, *supra* note 93, at 250-51. COPPA's goal is to protect children who use the Internet, but COPPA did not contemplate protecting children from third parties. *See* Kearney & Millstein, *supra* note 93, at 250-51. COPPA has gone largely unenforced for over a decade. *See id.* at 251. COPPA has several Internet privacy goals, which cover a wide range of interests from enhancing parental involvement to limiting the collection of children's information without parental consent. *See id.* at 250.

100. *See* ADOPTION DISRUPTION AND DISSOLUTION, *supra* note 89, at 5-6 (discussing challenges of collecting accurate data on adoption dissolution).

101. *See id.* at 6 (explaining difficulties associated with retrieving adoption dissolution statistics).

102. *See id.* (noting independent studies conducted, but no national studies to date). Most studies have focused on narrow populations. *See id.*

The Federal Adoption and Foster Care Analysis and Reporting System (AFCARS) only tracks children who enter the public welfare system and those statistics are also inconsistently reported.¹⁰³ The Statewide Automated Child Welfare Information System (SACWIS) regulations require that states create comprehensive data collection systems, but neither AFCARS nor SACWIS require that agencies specifically collect disruption or dissolution data.¹⁰⁴ In fact, even among practitioners, researchers, and policy makers, uniform terminology for adoption terminations is severely lacking.¹⁰⁵ The absence of comprehensive, accurate statistics has resulted in a body of inaccurate adoption data in the United States.¹⁰⁶ Reforms are needed both nationally and locally to better track and manage adoption dissolutions.¹⁰⁷ In the interest of creating a progressive child-welfare system that is able to serve the needs of its children, better data must be collected.¹⁰⁸

B. Legislative Failure

The ICPC has failed due to the lack of resources and judicial oversight that typically serve to encourage state compliance.¹⁰⁹ The absence of an enforcement mechanism supporting the principles of the ICPC has resulted in the inability of states to work together to facilitate interstate adoptions as the compact originally intended.¹¹⁰ Problems plaguing child welfare agencies

103. *See id.* (reporting system's data only retained for children in public foster care). The reports issued by AFCARS do not include elective adoption dissolution statistics for children who do not come to the attention of the public child welfare system. *See id.* Federal regulations do not require state welfare agencies to report adoption disruption or dissolution data. *See* WHAT'S WORKING FOR CHILDREN, *supra* note 58, at 28.

104. *See* WHAT'S WORKING FOR CHILDREN, *supra* note 58, at 28 (stressing termination statistical data lacking). Until there is comprehensive data collected on all adoptions, it will be increasingly difficult to draw systemic conclusions on the adoption landscape. *See* Stolley, *supra* note 58 (stressing need for systemic database and national studies).

105. *See* Stolley, *supra* note 58, at 41 n.7 (pointing out discrepancies within child welfare community contributing to system failure). Concerns surrounding the privacy of families, coupled with the drastic variations in law from state to state, make data collection increasingly difficult. *See id.*

106. *See* ADOPTION DISRUPTION AND DISSOLUTION, *supra* note 89, at 6 (emphasizing limited longitudinal studies resulted in absence of adoption statistics and inaccurate figures).

107. *See id.* (arguing for uniform national database). While a national database would not solve the problems associated with adoption in the United States, it would help to piece together a statistical picture to better understand issues and develop strategies to solve such issues. *See id.* at 40.

108. *See* Stolley, *supra* note 58, at 38-40 (discussing benefits of national data uniformity among states).

109. *See* Sankaran, *supra* note 78, at 385-86 (addressing judicial, legislative, and practical frustration with inefficacy of compact). The ICPC has banned judicial oversight for the past forty years and has left all decisions in the unrestricted hands of the state agencies. *See id.* at 396. Policymakers and advocates have argued that the statute is unworkable and prohibits the efficient placement of children across state lines. *See id.* at 396-98. Agencies across the country are notoriously understaffed with caseworkers who are overworked, underpaid, and often have very little experience. *See id.* at 388, 445. Caseworkers are prone to making errors as they are left to employ loose legal standards and work without any judicial guidance. *See id.* at 444. Additionally, in the event that an error is made, there are no measures in place to perform administrative reviews. *See id.* at 446.

110. *See id.* at 386 (highlighting need for federal intervention to enforce compact provisions due to

include a failure to promote information sharing between interstate agencies, and a lack of repercussions that could address such a shortcoming in the program.¹¹¹ In 2011, the administrator of the ICPC issued a nationwide alert to child welfare authorities warning of the dangerous practice of placing adoptive children with individuals the parents met online.¹¹² The alert asked agencies, as well as respective attorneys general and law enforcement, to be aware of such practices; the alert, however, received no response.¹¹³

C. Advertising and the Ease of Internet-Promulgated Illegal Adoptions

States have long regulated the use of advertising to promote adoption, primarily focusing on insulating adopted children from contact with biological parents and protecting adoptive parents from fraud.¹¹⁴ The use of the Internet has revolutionized the adoption process, creating a do-it-yourself alternative for prospective parents looking to circumvent the vetting process of legal adoption.¹¹⁵ Adopting, or re-homing, through unregulated online forums allows individuals to evade background checks, curtail home investigations, and avoid any official monitoring of the placement, post adoption.¹¹⁶

failure). Recently, child welfare agencies have implemented initiatives to reform the ICPC and have made proposals to state legislatures across the country. *See id.* (emphasizing national consensus reached determining need for overhaul).

111. *See* Freundlich, *supra* note 75, at 32 (addressing need for standardization and accountability). The ICPC mandates that the sending agency comply with the requirements of the receiving state, as well as the ICPC. *See id.* The ICPC is a necessary regulatory tool, but its potential has been undermined by the practical problems associated with implementation. *See id.* at 54. This suggests a need for a newly designed ICPC, but there is a low probability of state adoption and implementation of any new federal statute. *See id.* Perhaps the most effective remedy is to amend existing federal legislation in the interest of making consistent oversight the backbone of child welfare policy. *See id.* at 53. The ICPC, as it stands, does not serve to promote safe and efficient interstate transfers. *See id.*

112. *See* Twohey, *supra* note 13 (noting lack of response to alert despite urgency of request). The official report requested that such cases be documented and escalated to the national nonprofit that oversees the ICPC. *See id.* The official who issued the warning, Stephen Pennypacker, says that he issued the alarm after a child welfare worker reported cases of children being sent to new homes without the approval of authorities. *See id.*

113. *See id.* (detailing alert issued putting local officials on notice).

114. *See* USE OF ADVERTISING, *supra* note 79 (discussing state efforts to protect parties to adoption through advertising regulation). COPPA and other legislation have focused on protecting children from potentially damaging interactions, including finding birth parents from a closed adoption. *See* Hughes, *supra* note 93, at 256-67. Legislation, however, has not yet addressed entire adoptions that take place outside the bounds of the law: the underground adoption network. *See id.*

115. *See* Twohey, *supra* note 13 (investigating online forums with advertisements for unwanted children seeking adoptive parents). This route is also available for those who were unable to adopt a child legally in the past, or who could not pass the vetting process. *See id.* Parents who regret adopting are also turning to online forums to seek out new homes for their unwanted children. *See id.* One parent advertised an adopted child whom they had taken home for five days. *See id.* The child was an eight-year-old girl from China and the parent posted asking viewers to share the advertisement with “anyone [who] you think may be interested.” *See id.* Reuters reviewed 5,029 postings in just one *Yahoo!* group over a five-year period, and on average, one child was advertised per week, ranging in age from six to fourteen. *See id.* Some children re-homed through online forums have suffered physical, sexual, and emotional abuse. *See id.*

116. *See* Twohey, *supra* note 13 (exploring reasons individuals may seek out online options). One

State initiatives currently regulate adoption advertising.¹¹⁷ Several states allow advertising by attorneys, physicians, prospective parents, and agencies, while others explicitly prohibit advertising altogether.¹¹⁸ An online advertising medium could, potentially, better pair prospective parents with children, but thorough regulation is necessary to ensure child and parent safety.¹¹⁹

D. Future Policy Recommendations

While no legislative amendment will entirely prevent criminals from taking illegal custody of children, lawmakers should work to incorporate provisions that can serve to both deter criminals and protect children.¹²⁰ There is ample legislation governing adoption at inception, but when adoptions fail, legislation fails to protect children.¹²¹ The child welfare system is in need of adoption specialists to track adoptees, ensure continuity throughout the process, and assure that case managers are not transferred or overworked.¹²²

Further, judicial oversight is imperative; discretion in regulating intrastate and interstate child transfers must not be solely in the hands of the child-welfare agencies.¹²³ Legislation to protect the vulnerable parties to adoption is also needed so that women struggling with unanticipated pregnancies, prospective parents desperate to start a family, and adoptees hoping to find a safe home are all best served by the child welfare system.¹²⁴ While fraudulent dealings may have always been a risk in the realm of adoption, the Internet has enabled an underground network of anonymity to operate freely throughout the country.¹²⁵

Facebook group's creator remarked that after adopting a child, "people get in over their heads" and often feel isolated, and overwhelmed with nowhere to turn. *See id.*

117. *See* USE OF ADVERTISING, *supra* note 79 (discussing various state laws regarding private placement adoptions). Various state statutes address print, media, and online advertising, varying greatly based upon jurisdiction. *See id.* (explaining range of adoption advertising permitted from state to state).

118. *See id.* (providing state by state statutory analysis).

119. *See id.* (explaining advertising as generally efficient and effective but requiring regulation).

120. *See* Beck, *supra* note 65 (discussing obstacles facing comprehensive state adoption law reform). Resolution of these issues remains difficult when faced with criminals who illegally take children with no regard for the consequences. *See id.* at 431.

121. *See* Twohey, *supra* note 13 (emphasizing lack of government oversight following completed adoptions).

122. *See* Sankaran, *supra* note 78, at 390-91 (emphasizing caseworkers do not have time to meet with families or conduct investigations); *see also* HOWARD, *supra* note 77 (detailing demands on social workers and resources required to maintain facilities).

123. *See* Sankaran, *supra* note 78, at 395 (describing importance of judicial oversight to prioritize interests of families). Overwhelmed agencies could greatly benefit from judicial oversight to ensure an efficient and effective child welfare system. *See id.*

124. *See* HOWARD, *supra* note 77, at 26 (highlighting vulnerability of parties and sensitivity of situations). While the Internet may benefit some aspects of the adoption process, the Internet also carries many risks. *See id.* The lack of reliable vetting processes to determine the legitimacy of parties to adoptions, contributes to fraudulent, dangerous situations. *See id.*

125. *See id.* at 26 (noting individuals may engage in outright fraud while others engage legally but

State and federal policymakers must work to make child welfare a priority across jurisdictions, hold commission hearings, and advocate for research evaluating adoptions; such reforms should help change how children are treated and monitored within a currently flawed system.¹²⁶ Children within every child welfare system across the country are experiencing psychological and physical harm, as well as exploitation, but more research is needed to evaluate the gravity of these harms and to explore how failures may be improved.¹²⁷ Policymakers and law enforcement officials alike should work to enact legislation to track Internet activity surrounding adoptions.¹²⁸ Social media and networking companies, in light of the findings of several recent investigative and institutional reports, should also work to further refine policies on adoption practices and to ensure users' legal compliance.¹²⁹

While it is important that each jurisdiction look at the problems unique to its own child welfare system, it is critical that states also work together to create uniform law.¹³⁰ Disparities between the laws of the states create confusion, prevent predictability, and present obstacles for parents attempting to lawfully adopt children into loving homes.¹³¹ Disparities between the laws of different states also create more ambiguity resulting in an overall greater risk of fraud to already vulnerable parties.¹³² Uniformity of state laws may not eliminate all problems, but could better balance the interests and achieve the goals of all parties involved in the adoption process, including parents, children, courts, and

circumvent ethical standards). It takes only basic skills and a few dollars to develop and maintain a website with the capacity to defraud and exploit vulnerable parties. *See id.*

126. *See id.* at 53 (addressing need for change on systemic level to guard against fraud and harm). There is little regulation of online adoption services despite the prevalence. *See id.* at 52. While the Internet has the potential to make an extremely positive impact on the future of adoption practices in the United States, the serious risks should not be overlooked. *See id.*

127. *See id.* at 53 (advocating for research on constituents affected by adoption scams and exploitation); *see also* Merrell, *supra* note 61, at 2 (noting ten percent of all adoptions dissolve, and fifteen percent associated with older children).

128. *See* Beck, *supra* note 65, at 431 (discussing importance of regulating both independent and agency based adoptions). Independent and agency initiated adoptions must both be screened for potential exploitation of children. *See id.*; *see also* HOWARD, *supra* note 77, at 53 (suggesting law enforcement and policymakers track online activity and implement reforms). Enforcing the legislation and penalizing violators is equally important as legislating reform. *See id.*

129. *See* HOWARD, *supra* note 77, at 53 (addressing importance of social media giants refining policies in light of Evan Institute reports); *see also* Twohey, *supra* note 13 (reporting illegal adoption networks found operating on *Yahoo!* and *Facebook*). *Yahoo!* and *Facebook* seem to have become hosts of large lawless marketplaces that are operating with little to no government scrutiny. *See* Twohey, *supra* note 13.

130. *See* Simpson, *supra* note 65, at 577 (discussing potential pitfalls resulting from inconsistent adoption laws among states). Incompatibility among the states makes it increasingly difficult for parties to ensure compliance with laws of several jurisdictions. *See id.*

131. *See id.* (discussing practical impact of incompatibility of laws between states).

132. *See id.* at 577, 604 (highlighting unnecessary obstacles created for loving parents longing to adopt children into their homes). Ambiguities in the law make finalizing adoptions more difficult, expensive, and time consuming for the parties involved. *See id.*

legislatures.¹³³

IV. CONCLUSION

Child welfare law has always had a crude effect on society, as it attempts to regulate issues affecting its most vulnerable members. While various adoption topics have been legislated, investigated, researched, and debated over the past half-century, the same issues remain unresolved. Unfortunate outcomes that befall some adoptees in the United States are due in large part to a broken system that allows children to escape the watchful eye of the authorities. Recent developments like the online, underground child network should alarm society and encourage large scale reform. Taking progressive measures now by enacting statutory uniformity, forming national databases, and improving the collection of statistics will light the way for reform in the future.

The legal framework for child welfare has reached many progressive milestones since the mid-nineteenth century practice of placing out children on Orphan Trains. It is startling, however, that weaknesses in the welfare system have allowed for the development of our own modern day atrocity. The legal and social evolution of adoption has been a long and storied struggle, but with focused efforts to strengthen the child welfare system, we will, in turn, promote the health, safety, and happiness of all children who enter the government's care.

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133. See Simpson, *supra* note 65, at 604 (confirming initiatives in place to achieve balance among adoption parties). Adoption disruptions and failures can sometimes be attributed to inconsistencies in the law and could be improved through working to create uniformity among jurisdictions. See *id.*