

# Is Criminalizing Re-Homing the Best Solution? A Look Into Safe Adoption Policy

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*This paper will examine existing state policies of criminalizing re-homing, and their potential benefits and costs. Recommendations are made to mitigate the potential costs of criminalizing re-homing and to prevent families from reaching the point of re-homing their adopted child.*

## Introduction of the Policy Problem: Re-Homing

On September 9, 2013, *Reuters* published a five-part article, *The Child Exchange*, (Twohey, 2013) to bring attention to a practice widely referred to as “re-homing,” in which parents transfer custody of their unwanted adopted children to non-relative adults or families without informing any professionals or government systems. The article identified several social media platforms, such as Yahoo and Facebook, where parents post advertisements either of children waiting to be re-homed or wanting to receive re-homed children. Because this practice intentionally circumvents authorities and professionals, it appears that the only statistics about re-homing come from the *Reuters* article, which examined messages advertising 261 children in one Yahoo! group. The analysis found that offers to re-home children occurred at a rate of one child per week. About 70% of the children offered were adopted internationally between the ages of 6 and 13 (Twohey, 2013).

According to a report by the Government Accountability Office [GAO] (2015), families might choose to re-home a child for three main reasons: lack of preparation to parent a child with special needs, such as post-institutionalized behavior, attachment disorder, physical or mental health problems particularly for international adoptions; lack of access to post-adoption services to help them cope with those challenges or avoid reaching a crisis point in their adoption; and reluctance to seek help due to fear of repercussions and associated stigma.

Re-homing is an unregulated practice, regardless of the cause or level of parent desperation, which has potentially damaging consequences for children. Re-homing creates new opportunities for child traffickers<sup>1</sup> (Burdick,

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<sup>1</sup>As the definition on UNICEF’s website indicates, child victims of trafficking are recruited, transported, transferred, harbored, or received for the purpose of exploitation, while re-homing is the behavior of some parents transferring the custody of their children to strangers without professional involvement and court approval. Re-homing usually happens when the

2015) and puts adoptive children in great danger for abuse and psychological damage (Kunz, 2014). Children are given to new parents without any protective measures in place, such as extensive background, health, and financial screenings, or any other pre-adoption trainings and counseling, which are required by federal or state law before prospective adoptive parents receive a referral (GAO, 2015).

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Adoption is a hard process for both the family and the child. Several required services before the adoption help the newly formed family units integrate and adjust. Background screenings are designed to ensure the eligibility and suitability of the adoptive family. Screenings include a check for child abuse history and criminal history related to children. The process also ensures that the adoptive family is prepared emotionally and financially for accepting a new family member. The permanency and sustainability of an adoption is likely to be diminished without these prerequisite screenings. Pre-adoption trainings help families prepare for child-specific challenges experienced as a result of adoption and provide information on post-adoption services. These services could potentially reduce the risk of failed adoptions and avoid traumatic experiences for adoptive children.

Re-homing bypasses these helpful steps. There is no effort taken to make sure the child's best interests are met. Unregulated transfers of custody could place children in risky situations. Media reports (Twohey, 2013; Hardy, 2015) cite cases that include re-homed children being verbally, mentally, and sexually abused and exploited, involved in child pornography or child trafficking (Cousins, 2015).

### **History and Variation of Policy Addressing Re-Homing**

Government, at both the federal and state levels, has worked to address re-homing since the media exposed this harmful practice. Several states modified, proposed, or enacted new laws and regulations, which include making re-homing illegal and restricting advertising children or potential homes for placement.

In April 2014, Wisconsin was the first state to respond to the media exposure by passing legislation targeting re-homing (Kunz, 2014). Wisconsin criminalizes advertising related to adoption as well as the delegation of the care and custody of the child to a non-relative for a period greater than one

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parents feel incapable of meeting the child's need, without the intention to sell or exploit the child. But the stranger who receives the child might be a child trafficker with the intention of making a profit from the child.

year without petitioning a court. These criminal sanctions may include up to a \$10,000 fine and 9 months in prison (WIS. STAT. § 48.979 (1m) (g) (2013)).

Colorado created new legislation on May 22, 2014 (Kunz, 2014). The state has not criminalized re-homing—that is, the actual transfer of custody—but it does prohibit advertisement on the Internet or through any other public medium to find a child to adopt or to find an adoptive home for a child. Authorized services (i.e. fertility clinics, adoption agencies and adoption attorneys) are exempt from the advertising ban. Violation of the law, is a Class 6 felony (COLO. REV. STAT. § 19-5-213.5 (4) (2014)). In June 2014, both Louisiana and Florida passed laws prohibiting the advertisement and the re-homing of a child (Kunz, 2014). Violation of the laws lead to criminal sanctions.

Arkansas moved to criminalize re-homing following a scandal in their state legislature. In early 2015, it became public that Arkansas State Representative Justin Harris re-homed his two adopted daughters, ages 3 and 6, to a man who allegedly sexually abused one of them. The legislature quickly and unanimously passed a bill making re-homing a felony punishable by up to 5 years in prison and a \$5,000 fine (Ribben, 2015).

In June 2015, the Maine legislature unanimously overrode Governor Paul LePage's veto of a bill to prohibit the re-homing of adopted children. Re-homing in Maine is a crime subject to the same penalties as abandonment. The legislation also includes an affirmative defense clause to protect people acting in good faith from penalty (Hickman, 2015).

No federal law specifically prohibits re-homing, although the issue has gained traction with some members of Congress. An adoption safety bill was introduced on April 28, 2015 that would make it illegal to “offer to engage or engaging in the transfer of permanent custody or control of a minor in contravention of a required legal procedure” under the category of child exploitation (Langevin, 2015). The bill also promotes grants for and the provision of pre- and post-adoptive support services. This bill was referred to the Subcommittee on Health on May 1, 2015, but no action has been taken since then.

In summary, six states enacted laws to criminalize re-homing, and some impose criminal penalties on the advertisement of adoptive children or potential homes for placement. States' definitions of “re-homing” vary, but generally include transferring or assisting in a transfer of physical custody of a child to a non-relative without court approval with the intent of avoiding permanent parental responsibility.

## **Cost-Benefit Analysis of Criminalizing Re-Homing**

Re-homing is a newly identified problem that will require more research into the impacts of the policies implemented at state levels of government. Data to measure the success of these newly adopted laws are not yet available. This section will, instead, examine the potential costs and benefits of passing legislation to criminalize re-homing.

## **Benefits**

Several potential benefits are derived from the criminalization of re-homing. They include raising public awareness, deterrence, promoting legal ways to terminate adoption, and protecting children. However, there are some limitations that might diminish the benefits in terms of the severity of the punishment and whether the law addresses the underlying problem behind re-homing.

Public awareness is important because, before the *Reuters* article and subsequent state responses, governments and the public knew little about the practice of re-homing children. Parents generally re-home their adoptive children, wishing to find them a more suitable home, but are unable to imagine the destructive results of this practice. The criminalization not only alerts the adoptive families to the dangerous consequences the children might face, but also reminds child welfare agencies, social workers, school teachers, and the public at large to be aware that a child that might be a victim of re-homing.

Criminalization is also a symbolic denunciation of the practice (Fraser, 2002). The labeling of re-homing as a crime sends a message of a social judgment and classifies the practice as something that is morally wrong because it harms children. This judgment might reinforce public sentiment, which increases the awareness of this issue and creates a relatively safe environment to reduce the risk of children being re-homed.

Public awareness and the criminal penalties associated with re-homing are expected to deter families from re-homing adoptive children themselves. Conviction and sentencing are likely to reduce the future incidence of the criminalized practice. Reductions will likely be achieved through the educational effect of general deterrence (Fraser, 2002). With the punishment of fines ranging from \$5,000 to \$10,000 and/or up to 5 years in the prison, re-homing can be deterred and reduced.

The penalties associated with criminalization help to promote legal ways to terminate adoptions. Even if the goals for adoption are permanency and stability, support and services must be provided for families that decide to no longer parent a child. Past practices for terminating an adoption required families to either to re-home the child privately or find an adoption or other child welfare agency to help dissolve the relationship with the adopted

child. The criminalization of re-homing will mean that the only legal way for parents to transfer custody of an adoptive child is to inform proper personnel, such as a child welfare agency or family court, and to be involved in a legal procedure to terminate their parental rights. Agency participation in the termination process allows the child welfare system to monitor adoption disruption and dissolution, and provides a resource for data collection. A formalized system for adoption termination ensures the child's best interest is met and gives researchers increased ability to analyze data and find ways to keep adoptions permanent.

Protecting children is the primary benefit of criminalizing re-homing. Reducing the incidence of re-homing reduces the chances of child exploitation, child abuse, and child trafficking, as mentioned above. While not all children will be exposed to such dangerous and negative situations, the act of placing a child in a new and unfamiliar environment without proper care from the parents and intervention from a social worker or therapist might still traumatize the child, causing lasting impact on the child's development. This is often the case with re-homing since there is no pre-training for the parents and no professional assistance involved.

Despite the benefits that could be expected after the criminalization, there are some limitations. When the punishment is not severe enough, the effectiveness of criminalization will be undermined. For example, according to *Reuters*, children with special needs are much more vulnerable than healthy kids to re-homing (Twohey, 2013). One major reason for this susceptibility is that the family invests more emotionally and financially on a child with special needs, and does so without much support. The average cost of residential care in Tennessee is approximately \$65,000 per year, compared with the average adoption subsidy of \$4,824 per year (The Evan B. Donaldson Adoption Institute, 2010). Although the fine is a maximum of \$10,000, desperate parents might take the risk to re-home because the cost of child care is much higher.

In addition, simply outlawing re-homing does not solve the underlying causes of the problem. To prevent the family from re-homing, it is essential to have parents prepared for adoption and to make access to post-adoption services easier. The accessibility of these services means that when the family finds itself trapped in relational and functional crises during the process, they can quickly identify affordable and effective services that address their challenges, such as counseling and therapy, support groups, respite care, and educational and information resources (Child Welfare Information Gateway, 2012). Moreover, it also means the parents feel comfortable reaching out to professionals or agencies when they are making a decision about whether to

continue to parent their adoptive child.

## **Costs**

Despite the benefits criminalizing re-homing might bring, it is acknowledged that there are also substantial costs to the criminalization of re-homing. Criminalization has the potential to scare away prospective adoptive parents and leave more children in the foster care system or worse situations, especially children with special needs. If so, the potential decrease in prospective adoptive parents will result in fewer adoptions, which leaves more children in need in the foster care system and generates considerable financial costs for the government.

The foster care reimbursement fee is higher than an adoption subsidy. In a 3-year study, Barth, Lee, Wildfire and Guo (2006) pointed out that in North Carolina, the average adoption subsidy cost is approximately \$9,000. The average long-term foster care reimbursement, conversely, is about \$14,893 per child. In another study, the total maintenance (reimbursement fee) and administrative costs per child annually in the foster care system were \$25,782; the total of adoption assistance payments and administrative costs per child annually were \$10,302 (Zill, 2011). Adoptive parents are more likely to work full time and are less likely to rely on public welfare (Zill, 2011), which costs the government less.

Other public costs warrant consideration. Children who spend time in foster care are more likely to encounter serious challenges later in life. Children experiencing more time in foster care are at a higher risk for encountering teen pregnancy, homelessness, incarceration, mental health issues, and are less likely to complete their education or to find employment (Center for Family Representation, 2013), which can add costs to the government. A rule of thumb is that for every 3 months that a young child resides in an institution, the child loses 1 month of development (Williamson & Greenberg, 2010). These all cost society more. If criminalization discourages prospective adoptive parents, society will likely spend more on children in the foster care system who could have been adopted, although the exact number is not clear yet.

Criminalization might also disproportionately affect poor families. The demographic information shows that a large proportion of domestic adoptions from the foster care system are relative adoptions involving families of lower socioeconomic status, who might have a higher chance of re-homing their adoptive children due to challenges surrounding family capacity and condition (J. Schmidt, personal communication, November 13, 2015).

There are also direct costs to a community in enforcement expenditures and lost opportunity costs. The level of enforcement will vary depending on the nature of the crime, the pervasiveness of the conduct, and the means available to detect it (Frase, 2002). However, it is obvious that these costs must include resources devoted to detection and punishment of criminals, such as police surveillance, court costs, and imprisonment. Since re-homing is difficult to effectively track, it puts the burden on the police, child welfare system, and other related departments to investigate.

The chilling effect of criminalization is another potential cost that might drive people engaging in this behavior further underground. Families encountering severe problems might resort to methods outside the confines of the law to re-place the children. They might take the children outside the United States to evade the law, sending them across the border to Canada or Mexico, making them harder to track as well as putting the children in a far more dangerous situation with few chances to be rescued. The threat of conviction might also make families afraid to seek help. Additionally, enacting criminalization laws could worsen the situations of the children who have already been re-homed (i.e. confined at home), because the new family is afraid to let people know their child was re-homed to them.

Another major cost of criminalization is its effect on the family members, especially children, left in the home. As of 2010, 79% of adoptive families have more than one child in the home. (Kreider & Lofquist, 2014). Arrest, prosecution, and conviction have disastrous effects on both an individual and a family unit (Thompson, 1989). Fines reduce whatever resources are available to support the family and care for the children. Imprisonment means that parents are not available to care and provide for the family. As such, the family's children may need to resettle with relatives or the foster care system. Phillips and Bloom (1998) pointed out that children in the care of relatives may have academic, behavioral, and emotional problems. Children whose parents are incarcerated may feel abandoned, angry, and worried for their parents, and be anxious about their own future.

## **Conclusion**

Adoption is intended to provide children a safe and permanent home to grow and develop healthily and happily. The practice of re-homing potentially puts children in danger by exposing them to non-vetted families. Criminalizing this practice is an important step to prevent re-homing because it sends a message to the public, has deterrent and educative effects to regulate parents' behavior, and protects children in the end. However, it also has substantial limits and costs. For that reason, I recommend that states that criminalize

re-homing take steps to mitigate the costs and target the underlying issue of how to improve the rate of successful adoptions and establish strategies for parents when they encounter challenges.

These additional policies could include expanded screening of prospective parents, increased pre-adoption preparation and family training, and increased access to quality post-adoption services. Strengthening the preparation and training that families receive prior to adoption finalization can improve parents' ability to assess their readiness for adoption and build skills needed to meet the challenges of raising children with special needs (Children' Bureau, 2015). Affordable access to high-quality post-adoption services makes a critical difference in the long-term success of adoptions (Congressional Coalition on Adoption Institute, 2013). Adoptive families benefit greatly from counseling services, support groups, and respite services (Jordan, 2015). These pre-adoption and post-adoption services promote better outcomes for both the child and family and help them move toward permanency.

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