Comments to the Uniform Law Commission
On the draft of the
Unregulated Transfers of Adopted Children Act
March 5, 2021 Draft
Submitted by
Observers
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Background:

When the Committee began to address the issue of unregulated custody transfer of adopted children based on reports from the State Department, state Attorneys General and others, it had one job – to create a statute that would limit abuses and protect adopted children from dangerous practices. Normally, we would applaud those efforts as a way to ensure more effective and consistent regulation from state to state.

However, since the drafting process began several disturbing patterns have emerged that we believe have had a profound impact on the resulting work product. The committee is rightly populated with a variety of experts in administrative law. However, there is an overrepresentation of institutional interests from state government and court officials to lawyers and adoption service providers.

Adoptees were woefully underrepresented in this process. Though some committee members asserted that there had been efforts to solicit adoptee participation, this does not appear to have materialized in any meaningful way. It took only a handful of phone calls to garner immediate participation by other adoptees and adoption reform groups. Unfortunately, their voices, their input, and the best interests of their constituencies, appear to have taken a back seat to the discussions of the limitation of liability and the desire to avoid a handful of hypothetical scenarios, most of which were unlikely to emerge in the context of rehoming activity.

Various committee members influenced by assorted preconceived ideas, misperceptions and/or personal or professional biases have ensured that the legislative language favors the interests of potential abusers, service providers and others seeking to protect the interests of third parties. Moreover, the effort was hampered by a dismissive attitude about the scope of the problem. Despite the growing number of high-profile cases, the exhaustive media reporting, the concerns of the Government Accountability Office and the active participation of Congress to

create clear, sustainable policies to protect children the committee continues to downplay the scope and impact of the practice.

As the process advanced over the past months several troubling themes and shortcomings have developed.

Putting the interests of adults before needs of adopted children:

A few months ago a commenter suggested that in light of the falling numbers of intercountry adoptions any proposed bill would only "benefit" fewer than 3000 families a year. What is startling, and highly problematic, about this comment is that the purpose of this legislation was not originally conceptualized as a "service" to parents but as a means to protect children from exploitation and abuse.

While the numbers of intercountry adoptions have fallen off dramatically in the past eighteen years - from a high of 22, 986 in 2004 to 2,971 in 2019 - the total number of intercountry adoptions that have taken place in that time is roughly 181, 571. During the same time, there have been approximately 825, 000 domestic adoptions from foster care. Thus, we have a potential universe of more than a million adopted children who may be considered at risk of unregulated custody transfer by parents seeking to avoid abuse or neglect allegations, criminal prosecution or other adverse actions. The paradigm shift from "child protection" to "service delivery" has profound implications for children.

Most experts agree that across a range of types of adoptions that nearly 25% of all adoptions fail, especially those of older children and children adopted internationally. If that statistic is accurate, we can assume that nearly a quarter of a million adopted children in the past 18 years have faced a change of circumstances. Many of those children have surfaced in tragic, dangerous and even deadly circumstances through a variety of legal actions, media reports, congressional investigations and other means. The numbers of trafficked, sexually abused and/or exploited children have skyrocketed in the last 20 years, especially for children who are living in unstable circumstances. The risk of rehomed children experiencing at least one of these outcomes is nearly absolute.

If increasing average ages of adoptees also increases the likelihood of adoption failure, the 3000 families referenced by the commenter would represent a dramatically higher level of risk for rehoming the children they adopted, exposure that could be escalating as international adoption numbers drop and more children with special needs enter the system. We need to know more about this possibility before undertaking the task of drafting legislation. However, in almost every instance institutional interests have silenced any narrative that involved the possibility of a broader problem. We believe this is irresponsible and short sighted.

As has been pointed out repeatedly, families who rehome their children are often doing so to avoid detection of, and accountability for, acts of abuse or neglect against

the adopted child. Of course, some adoptive parents who surrender their children are good people lacking post-adoption support options in a no win situation. Even in those cases, however, the circumstances precipitating the disruption of the adoption should be explored. Either way, this process should not be framed as a "benefit" for parents, it should be framed as a child protection measure to limit abuse, neglect, abandonment and/or exploitation.

Let us imagine the outcry if domestic violence statutes were based on the needs and wants of the abusers. Reformers over the years – some involved in this process - fought hard to keep victims at the forefront of any discussion about laws to protect the abused. It seems highly unlikely that anyone would have given much consideration to the input of domestic abusers or their allies in drafting legislation about domestic violence, much less create a law in which the abusers or other culpable parties effectively determined what protections the victim might have. Who would support an abuser driven process that strips away any meaningful legal consequences to discourage the behavior while simultaneously eliminating any hope of justice for the victim? This sets the bar so low it virtually shields abusive or negligent actor from legal consequences.

Flaws in the process.

There was a persistent lack of any sense of importance or proportion about the problem, a profound lack of insight into how this practice plays out for children, and a real lack of curiosity about how to quantify unmet need. One commenter actually suggested that any effort to codify a ban on rehoming was an "overreaction" despite thorough media reporting, at least one GAO investigation and aggressive Congressional action to address the problems.

When the Government Accountability Office began its investigation into rehoming it was clear that a) this practice is a problem that encompasses several adoption silos and b) there is inadequate oversight and reporting on which to build a real base of knowledge about what is causing it and how to limit those abuses and system failures. Yet it does not appear that the committee gave any serious thought to requiring the states to collect meaningful data or that the data should be analyzed and/or acted upon, especially in those cases when certain agencies are overrepresented in incident reports.

Though there were many attorneys, clinicians, service providers and judicial officials involved, it also appeared that few participants had any first-hand knowledge of how rehoming happens, why it happens or what are the real consequences for a vulnerable child passed off randomly to a stranger. There were no victims of rehoming on the panel though there are many adult adoptees available to illuminate the issues, including some of whom experienced this unfortunate practice after international adoptions carried out decades ago. The process also lacked any input from law enforcement officials who have investigated these cases and seen first-hand the victimization and trauma inflicted on the children involved.

The committee also appeared to advance its work with little knowledge of the legislative history of this issue in Congress, the correct venue in which to commence any effort to regulate this dangerous practice. Adoption is a practice with a great deal of interstate activity. Attempting to craft meaningful state laws in the absence of that frame of reference seems ill advised especially when Congress has already taken it up in an effort to require states to take this seriously and enact consistent rules.

Though a handful of states, like Utah, have taken forceful action, others have failed to rein in agencies or protect the children they victimized. Not only should these states not be permitted to take the first cut into "solving" the problem, they should actually be investigated for their own failure to prevent harm to children. On this point there a number of high profile, easily accessed, carefully documented media reports that can serve as illustrations. Dan Rather's documentary, Unwanted in America, provides case study of what happens when one state fails to regulate agencies, appropriately screen families, effectively investigate child exploitation or to protect children when they are abandoned.

There are ample precedents in other areas of the law for federal regulation of state based activities especially those involving interstate commerce or that have a compelling public health or safety component. The Interstate Compact on the Placement of Children (ICPC) was actually created to prevent these kinds of abuses. Ironically, it is also in place to verify that the parties involved remain "legally and financially responsible for the child." In most states the transfer of houses, cars and boats are documented more carefully after the initial acquisition than children are when the original adoption fails. This is unacceptable.

If an airline experiences more than one plane crash, the NTSB grounds the entire fleet while they investigate the circumstances of the event. Few airlines would remain in business for any length of time if their equipment failed repeatedly. Yet we have no idea if certain agencies are overrepresented in rehoming statistics – though anecdotal evidence certainly suggests this is the case.

When a commercial fisherman accidentally catches fish outside the boundaries of his or her fishing license he or she is harshly punished by NOAA with hefty fines and suspensions of their licenses. Agencies responsible for flawed placements that, for whatever reason, result in rehoming rarely face any consequences. And while adoptive parents sometimes advance successful wrongful adoption claims against agencies it is far more difficult for the adopted person to do so, especially after they have been moved to another situation.

When a child dies as a result of a rehoming incident or commits suicide due to the victimization and trauma they suffer the responsible authorities have no idea it has happened and there are no effective reporting requirements. A tragic example of this was the death of a young Ethiopian adoptee who took her own life recently.

She, along with two older sisters, was trafficked into a fraudulent adoption by an agency, now defunct, that was notorious for its lax practices. Worse yet, she and her sisters were subsequently forced out of the home by their adoptive parents and one at a time over the span of several states in less than ten years. No state agency checked on them, nor did the adoption service provider involved. This is true despite the fact that their story garnered national and international attention.

These young women were just three of many adoptees over decades who were left without official legal protections, health insurance, housing or other essentials for survival. Even as we speak, her surviving sister is struggling to prove she has the authority to settle her affairs because the original adopters – whose legal rights were never terminated effectively - are considered her next of kin. As one might imagine, they have no interest in participating in this process so a grieving survivor – also a victim of their callousness and neglect – is left to sort it out. Meanwhile, she and the grief stricken family in Ethiopia wait for closure. The committee's lack of curiosity about the experiences of victimized adoptees is deeply troubling. The willingness of high profile "experts" in the field to actually dismiss the importance of that information is even more disturbing.

Restaurant chains, trucking companies, agribusinesses and other enterprises are federally regulated every day. There is no excuse to ignore the importance of overarching federal guidelines in this case.

Expanding the scope of the statute to include ALL children.

When some participants of this process began suggesting that the proposed statute cover ALL children it was clear that the interests of adopted children in dangerous rehoming situations were being undermined to the point of having no value whatsoever. It is misleading to compare children in birth families and the rights and responsibilities of their parents with adopted children. Adopted children, many of whom have already suffered loss, trauma or abuse, face unique and distinct risks both as a result of the adoption process itself and the inconsistent, if not completely absent, post placement supervision process.

We can point to thousands of faulty, incomplete or fabricated home studies that placed children directly in homes with predators, severely mentally ill adopters and/or other adults with major risk factors for abusing, neglecting or exploiting a child that were ignored. We can point to countless cases where post placement supervision reports were fabricated, where the children were never examined or questioned despite severe abuse in the home. Foreign governments can produce far more documentation of this unfortunate pattern of practice than we can here.

Some adoptees did not have to worry about being rehomed, of course, because their adoptive parents have murdered them. The legacies of children like Hana Williams, Hyunsu O'Callaghan and dozens of others speak volumes about the potential for real

harm to adoptees when those responsible for their care and protection abdicate responsibility.

Yet there is more that differentiates, and further marginalizes, internationally adopted children. These children lack the network of extended family American children often have - grandparents, aunts, uncles, teachers and neighbors - looking out for them. Internationally adopted children often lack language skills to adequately report their abuse, and supervising caseworkers rarely have the language skills to query children in any meaningful way in post placement visitation. Families who home school their internationally adopted children avoid the important surveillance of mandated reporters. Most adopted children enter the adoption system due to loss and/or trauma and face additional challenges within that system. It 's nothing short of misleading to suggest ALL children face the same challenges that adopted children do.

In an effort to bolster their ALL children posture, the committee has asserted, "A parent has an inherent right to custody of a parent's child." While that is true to a point, there are numerous laws that define when a parent's rights can be ended. Adoption raises other issues around the integrity of that relationship. The discussion and the draft presume good faith on the part of the adopting parent. It repeatedly asserts that the parents should obtain various kinds of information about the child, implying that there may be "problems" with the child that the parent may want to know prior to adopting.

Nowhere in the language is there any real acknowledgement that, in fact, the problem may be with the parent. With the persistent use of the term "high risk" the blame is effectively shifted to the victim. Where is language that provides some leverage for states to determine fraud or other misconduct in the formation of the family? Child victims are victimized yet again by a prejudice that assumes they are responsible for the failure of the adoption.

This draft does not go far enough to protect adopted children and places more burden on them than it does on potential abusers. In fact, it pathologizes the children to a great extent by focusing on their potential shortcomings and challenges with the particular emphasis on "high risk" adoptions. We believe that we need to take a hard look at a system with many choke points before the child's profile is even an issue. In any case, the disruption of an adoption is not always the result of struggling, but well intended, families. There are other factors that can come into play involving third parties before, during, and after placement that can heighten the risk. This has to be acknowledged.

As for protections for ALL children, that's is responsibility of the existing US child welfare system. We have mandated reporting for ALL children. That is not the problem the committee was convened to address. By diverting attention away from, and obscuring, the multifaceted situation of adopted children, particularly those adopted internationally, we are simply amplifying the danger to innocent children.

A simple voluntary solution must be mentioned.

It must be said that there is an elegantly simple solution to this complex problem that could be implemented by adoption agencies on an entirely voluntary basis to stop rehoming overnight. To illustrate, we would direct your attention to this provision in the Lucky Dog Animal Rescue adoption agreement, an Arlington, Virginia based program. It reflects the prevailing attitude about rehoming in the animal rescue community:

I will not release the animal at any time into the wild, take the subject animal to a shelter or give the subject animal away for the purpose of relinquishing responsibility for it. Failure to comply with this provision constitutes a breach of this agreement and may result in legal action.

They contractually forbid the practice and invoke legal consequences if it happens. What more needs to be said?

One has heard the myriad of excuses to avoid this language in relation to protecting adopted children, mostly tied to exposure to legal liability or to limit administrative burdens and cost. But these provisions work. We understand that various legal constraints may preclude the states, or even the federal government, from statutorily requiring such a stipulation. We find it troubling that adopting a dog protects the animal more effectively than some adopted children.

It has been 175 years since the American child welfare system was created on a model set by the New York Society for the Prevention of Cruelty to Animals. It's time for us to enter the 21st Century when it comes to child protection. We could not in good faith conclude our comments without mentioning this obvious disconnect.

Conclusion:

Bureaucracies always fight reform. The auto industry fought the Clean Air Act. Chemical companies resisted the Clean Water Act. Both bills were enacted into law. When the EPA was proposed corporate interests fought with all their might to resist greater regulation. The agency was created. Few states want the federal government telling them what to do, whatever the issue.

One recalls that the states were not keen on the Adoption and Safe Families Act of 1997 but it passed Congress in less than a year with almost complete unanimity. The Intercountry Adoption Act raised major concern for the agency community, yet again, it was passed into law. Group home providers fought certain provisions in the recent Family First Act debate. The bill passed. In each of those scenarios, and many more, drafters put the public good first and not only did change happen but many of those industries benefitted.

When it comes to intercountry adoption, the practice is already under the purview of the US Department of State and the US Department of Homeland Security. This suggests, in the strongest possible terms, that any effort to address loopholes, remedy unintended consequences, and fill gaps in existing law should be informed first and foremost by the agencies, Congress and related experts with first-hand experience. If we are to ensure the safety of children who have not only come from foreign countries but who, like the young women referenced earlier, lived in multiple states, the only appropriate body to address the issue is the federal government. All of this arises from interstate activity. Our own child welfare system is both regulated and funded by the US Government. Thus it would be more useful to allow the process to move forward in the Congress rather than continue in the committee.

We feel strongly that this draft, especially with its emphasis on ALL children, does not serve to effectively bolster intercountry adoption as an important social practice. We have seen a sharp decline in international adoption over the past decade as an increase in abuses has become more apparent. Foreign government officials have repeatedly cited rehoming as a cause for real concern, and a reason to limit adoptions to the US. They are looking to the US to uphold their responsibilities in intercountry adoption and develop meaningful, enforceable responses.

It should be noted that the shift to ALL children in this draft sends a strong message to countries of origin and our Hague partners abroad that we are avoiding taking on the adoption related issues. If there is any hope of restoring good faith with those countries, then a good faith effort must be made. Real problems must be identified and addressed, not simply covered by a band aid in a process far more focused on limitation of liability and hypothetical scenarios than the realities of child protection.

We will continue to support the important work Congress is doing to understand and regulate this problem. We believe Congress takes this problem seriously and understands it. Frankly, even if the ALL children argument were valid, these are systems that involve significant interstate activity and are federally funded and regulated. Once Congress has set the bar the states will have an opportunity to implement consistent rules on a strict timetable.

It should also be noted that intense diplomacy will be needed to foster trust and rebuild adoption programs in foreign countries. Practically speaking, it seems unwise to put the judgment of a harried state legislator, who may or may not understand the complex geopolitical and child protection issues at play. Rather, we should rely on the insights and experience of international child protection, law enforcement and Foreign Service officers who are subject matter experts in the complexities of public policy and the risks to children of this practice.
Inadequate state rules will only serve to further compromise the welfare and safety of internationally adopted children. It is paramount that a national framework be

established. We will work to enhance the efforts of the federal government and the Congress to end the practice of rehoming. Therefore, we will oppose any effort to implement this draft.

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