



To: Unregulated Transfers of Adopted Children Act
From: Polly Crozier and Mary L. Bonauto, GLBTQ Legal Advocates & Defenders
Re: Comment on September 2020 Draft
Date: September 11, 2020

Dear Drafting Committee:

This draft Act only recently came to our attention. As an organization that provides support to stakeholders that will be negatively impacted by this Act, we write to provide a brief comment to express our concerns about the project as it is currently configured.

In particular, we are concerned about the expansion of the Act to cover all “transfers of custody” from parents. We believe that this expansion will have unintended, negative consequences. We also believe that the Act contradicts important state law protections that we have seen to be effective in protecting children and families.

Article 2, which attempts to regulate parents transferring physical custody of their children, will have unintended, negative consequences. As human beings, parents sometimes face challenging situations and need to rely temporarily on others for assistance. There are many situations where voluntary parental transfers of custody happen and should be facilitated rather than discouraged. In fact, Massachusetts has a statute - the Caregiver Authorization Affidavit Act - that specifically allows parents to transfer custody and decision making about health and education to another adult without any court involvement. See G. L. c. 201F, §§ 1-6. This provision was enacted in 2009 to protect parents’ ability to make choices *that are in the best interests of their children*. This Act, if enacted, would directly undermine the purpose of this statute. Below are some examples, including from GLAD’s work in Massachusetts, that demonstrate the benefits of voluntary custody transfers that could be prohibited or at least questioned under this Act:

- Undocumented parents can be in need of quick and reliable methods for authorizing alternate caregiving and custody of their children to trusted caregivers due to threats of deportation. Early in the Trump administration, GLAD worked in coalition with immigrants’ rights groups in Massachusetts to ensure that immigrant communities were aware of their statutory right to transfer custody and decision making to another adult for a period of two years outside of the court system.

- Transgender youth can be in need of a mechanism to live in a safe and affirming home with access to gender affirming health care, and voluntary, informal custody transfers can ensure that transgender youth are affirmed while allowing parents who are struggling with their child's gender identity time to better understand and support the needs of their child. GLAD worked with a transgender youth whose parents felt unable to continue to have physical custody and make medical decisions about gender affirming care but who wanted to maintain a relationship with their child. In this situation, the parents transferred custody and decision making through a caregiver authorization affidavit to a trusted adult who was able to house and assist the youth with educational and health care decision making. This result was much more beneficial than having to pursue a litigated, formal guardianship in court.
- Separating parents - including LGBTQ parents where one parent might not have a legal relationship to a child - can often resolve child custody disputes with an informal agreement that maintains a child's relationship with both parents but that is agreed upon outside of court and is not incorporated into a court order. These types of informal agreements that transfer or determine child custody arrangements without litigation or court involvement can be beneficial to children.
- State "safe haven" laws allow parents to voluntarily relinquish custody of newborn infants to police stations, fire stations and hospitals without fear of sanction.

By adding stringent guidelines about when transfers may occur and mandating state involvement for what might be temporary placements, Article 2 clearly discourages these and many other types of voluntary transfers of custody from parents that are in the best interest of children.¹

Closely related to the above point, Article 2 also greatly expands the scope of authority of child protection agencies upon voluntary transfers of custody, and does so even where there is no allegation of abuse or neglect. Pursuant to proposed Section 205, these agencies will now police voluntary and temporary transfers of custody rather than respect the parent's determination that a temporary transfer is beneficial for the family. This is another intrusion on parental prerogatives and with no clear public benefit in the mine run of cases. We are also concerned that mandated child welfare monitoring could lead to unnecessary child welfare investigations and separations of parents and children, particularly for communities already experiencing negative impacts of child welfare system involvement, including communities of color, the disability community, and the LGBTQ community.

Given our concerns, we respectfully suggest that the Act not expand to cover all parents, avoid the expansion of the authority of child protection agencies, and ensure that voluntary transfers of

¹The Act also raises constitutional concerns in that it undercuts the ability of parents, who are the natural guardians of their children and who are invested with constitutional protections, to direct the upbringing of their children.

custody are not discouraged. We appreciate the Drafting Committee's work on these important issues. If changes in this regard are not made, we likely would oppose the enactment of this Act. Thank you, and please do not hesitate to contact us with any questions.

Sincerely yours,

Polly Crozier and Mary L. Bonauto
GLBTQ Legal Advocates & Defenders