

D R A F T

FOR DISCUSSION ONLY

UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

[Name change for consideration: UNIFORM CHILD PLACEMENT PROTECTION ACT]

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

January 31 – February 1, 2020 Drafting Committee Meeting



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January 17, 2020

UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

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1 **UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT**

2 **[Name change for consideration:**
3 **UNIFORM CHILD PLACEMENT PROTECTION ACT]**

4 **[ARTICLE] 1**

5 **GENERAL PROVISIONS**

6 **SECTION 1-101. SHORT TITLE.** This [act] may be cited as the Unregulated
7 Transfers of Adopted Children Act [Name change for consideration: Uniform Child Placement
8 Protection Act].

9 **Reporter’s Notes**

10 The Style Committee asked whether the new name to be considered for the act should be
11 Uniform Adopted Child Placement Protection Act since the act deals with adopted children. I
12 have left it as it is pending (a) any further discussions we may have about it, and (b) the results of
13 our request to change the scope of Article 3 to cover all children.
14

15 **SECTION 1-102. DEFINITIONS.** In this [act]:

16 (1) “Adopted child” means a child who, under the law of a state or a foreign country, is:

17 (A) adopted by final decree; or

18 (B) in a placement with an individual preliminary to adoption of the child by the
19 individual.
20

21 (2) “Child” means an unemancipated individual under [18] years of age.

22 (3) “Child-placing agency” means a person with authority under law of this state other
23 than this [act] or federal law to identify or place a child for adoption.

24 (4) “Person” means an individual, estate, trust, partnership, business or nonprofit entity,
25 public corporation, government or governmental subdivision, agency, or instrumentality, or other
26 legal entity.

27 (5) “Record”, used as a noun, means information that is inscribed on a tangible medium
28 or that is stored on an electronic or other medium and is retrievable in perceivable form.

1 (6) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
2 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
3 the United States. The term includes a federally recognized Indian tribe.

4 **Legislative Note:** *In subsection (2) a child is defined as “an unemancipated individual under*
5 *[18] years of age.” Eighteen years of age is used because it is the common age of majority in*
6 *the United States. However, if the state’s age of majority is defined as a different age, it should*
7 *be inserted here instead of 18 years.*

8
9 **Reporter’s Notes**

10
11 Subsection (3): During our online meeting we decided not to use the word “match” in the
12 then-existing phrase “to match or place a child for adoption.” We decided to replace it with the
13 word “identify” and it now reads “to identify or place a child for adoption.”

14
15 I was asked to search for possible synonyms for “match” or “identify” and also to see
16 how the Hague Convention deals with this concept. Unfortunately, there don’t seem to be any
17 simple word synonyms that work better than “identify.” However, the Hague Convention uses
18 the term “assist in the placement...” when dealing with the same concept. Thus, the phrase might
19 read “to assist in the placement of a child for adoption.”

20
21 **SECTION 1-103. LIMITATION ON APPLICABILITY.** This [act] does not apply to
22 an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. Section 1903(4),[as
23 amended,] to the extent that application of this [act] would conflict with the Indian Child Welfare
24 Act, 25 U.S.C. Sections 1901 through 1963[, as amended].

25 **Legislative Note:** *A United States Code citation (U.S.C.) follows a reference to a federal statute*
26 *in this section. The United States Code citation is included as an aid to the reader. If the state’s*
27 *convention is to omit the United States Code citation, omit the United States Code citation in this*
28 *section.*

29
30 *It is the intent of this act to incorporate future amendments to the cited federal law. However, in*
31 *a state in which the constitution or other law does not permit the phrase “as amended” when a*
32 *federal statute is incorporated into state law, the phrase should be omitted. The phrase should*
33 *likewise be omitted in a state whose law provides that absent a legislative declaration, the*
34 *referenced provision speaks as of the time the provision is applied.*

35
36 **Reporter’s Notes**

1 [ARTICLE] 2

2 INFORMATION AND PREPARATION IN HIGH-RISK ADOPTION

3 SECTION 2-101. DEFINITIONS. In this [article]:

4 (1) "High-risk adoption" means adoption of a child who:

5 (A) has been or is in foster or institutional care;

6 (B) previously has been adopted in the United States;

7 (C) has been or is being adopted under the law of a foreign country;

8 (D) has come or is coming to the United States to be adopted; or

9 (E) is not a citizen of the United States.

10 (2) "Inter-country adoption" means an adoption, finalized in the adopted child's native
11 country or this state, of a foreign-born child for whom federal law makes a special immigration
12 visa available.

13 (3) "Prospective adoptive parent" means an individual who has been approved under law
14 of this state other than this [act] to adopt a child.

15 Reporter's Notes

16
17 SECTION 2-102. HIGH-RISK ADOPTION: GENERAL INFORMATION.

18
19 (a) Before a child-placing agency places a child in a high-risk adoption with a prospective
20 adoptive parent, the agency shall provide, or cause to be provided, to the prospective adoptive
21 parent information in subsection (b). The information must be provided under rules adopted
22 under Section 2-107.

23 (b) The information provided under subsection (a) must address:

24 (1) possible physical, mental, emotional, and behavioral issues concerning
25 identity, loss, and trauma which a child might experience in adoption and probable effects on a

- 1 child in a high-risk adoption of leaving familiar ties and surroundings;
- 2 (2) financial resources, insurance coverage, and time management skills necessary
- 3 for successful placement of a child in a high-risk adoption;
- 4 (3) medical, therapeutic, and educational services available for a child in a high-
- 5 risk adoption, including language-acquisition training;
- 6 (4) post-placement and post-adoption services available to an adoptive parent and
- 7 child in a high-risk adoption to assist in responding effectively to physical, mental, emotional
- 8 and behavioral issues;
- 9 (5) causes of disruption of an adoptive placement or dissolution of an adoption
- 10 and services and resources available to help avoid disruption or dissolution; and
- 11 (6) prohibitions under [Article] 3.

12 **Reporter's Notes**

13

14

15 **SECTION 2-103. HIGH-RISK ADOPTION: CHILD-SPECIFIC INFORMATION.**

16 (a) Except as prohibited by law of this state other than this [act], before a child-placing

17 agency places a child in a high-risk adoption with a prospective adoptive parent, the agency shall

18 provide, or cause to be provided, to the prospective adoptive parent the information in subsection

19 (b) about the child which is known or reasonably should be known by the agency and is material

20 to an informed decision to adopt. The information must be provided under rules adopted under

21 Section 2-107.

22 (b) The information provided under subsection (a) must include:

23 (1) the child's familial, cultural, racial, religious, ethnic, linguistic, and

24 educational background;

25 (2) the child's physical, mental, emotional, and behavioral health;

1 (3) any circumstance to which the child likely was exposed which might
2 adversely affect the child’s physical, mental, emotional, or behavioral health;

3 (4) the history of any institutionalization or adoptive or foster-home placement of
4 the child and the reason the institutionalization or placement was terminated;

5 (5) the child’s medical history, including immunizations;

6 (6) the child’s family medical history;

7 (7) the child’s United States immigration status, if applicable; and

8 (8) available records relevant to the information.

9 (c) Before a high-risk adoption is finalized, if additional information in subsection (b)
10 which is material to an informed decision to adopt the child becomes known or reasonably
11 should be known to the child-placing agency placing the child for adoption, the agency shall
12 provide the information, or cause the information to be provided, to the prospective adoptive
13 parent. The information must be provided under rules adopted under Section 2-107.

14 (d) A child-placing agency placing a child in a high-risk adoption has a duty to make
15 reasonable efforts to ascertain information about the child that is material to prospective adoptive
16 parent’s informed decision to adopt the child.

17 **Reporter’s Notes**

18
19 Subsection (d): The Style Committee asked whether a child-placing agency has a duty to
20 use reasonable efforts to ascertain information about a prospective adoptive child in a high-risk
21 adoption, as assumed in subsections (a) – (c). It suggested that the duty be made clearer.
22 Therefore, I’ve added subsection (d) to state that duty.

23
24

25 **SECTION 2-104. HIGH-RISK ADOPTION: CHILD-SPECIFIC PREPARATION.**

26 (a) Before a high-risk adoption is finalized, or in an inter-country adoption before the
27 child enters the United States, a child-placing agency placing the child, to prepare the

1 prospective adoptive parent to respond effectively to the needs of the child, shall provide, or
2 cause to be provided, to the prospective adoptive parent applicable preparation in subsection (b).
3 The preparation must be provided under rules adopted under Section 2-107.

4 (b) The preparation provided under subsection (a) must include:

5 (1) the probable effect on the child of:

6 (a) previous institutional care, adoption or foster-care placement, or
7 multiple placements;

8 (b) attachment disorder, trauma exposure, or a similar emotional problem;

9 (c) fetal-alcohol-spectrum disorder, drug exposure, malnutrition, or similar
10 adversity;

11 (d) any difference in ethnicity, race, or cultural identity between the child
12 and the prospective adoptive parent or another child of the parent;

13 (2) the steps necessary for the child to acquire United States citizenship;

14 and

15 (3) any other matter the child-placing agency considers important to the adoption.

16 **Reporter's Notes**

17
18
19 **[SECTION 2-105. HIGH-RISK ADOPTION: POST-ADOPTION SUPPORT**

20 **SERVICES.**

21 (a) After a high-risk adoption is finalized, or after a child in an inter-country adoption is
22 placed with a prospective adoptive parent, if post-adoption support services will help ensure that
23 the child will remain safely in the custody of the parent or prospective adoptive parent, the child-
24 placing agency placing the child shall provide, or cause to be provided, the support services to
25 the parent or prospective adoptive parent. The support services must be provided under rules

1 adopted under Section 2-107.

2 (b) The post-adoption support services provided under subsection (a) may include:

3 (1) parenting-skills training and education, individual and family counseling, and
4 other in-home parent skill-based programs;

5 (2) services provided by a qualified clinician to prevent and treat mental health
6 issues; and

7 (3) substance-abuse prevention and treatment services provided by a qualified
8 clinician.]

9 **Legislative Note:** *If the law of the enacting state already requires a child-placing agency to*
10 *provide post-adoption support services, a restatement of those services or a reference to the*
11 *other law requiring provision of those services should be inserted instead of subsection (b). If*
12 *other law of the enacting state does not already require provision of post-adoption support*
13 *services, subsection (b) should be adopted.*

14
15 **Reporter’s Notes**

16
17 The Style Committee asked whether the “ensure” standard stated in the second line of
18 subsection (a) is too tough of a standard to impose. Instead, would it the following be a better
19 standard: “if post-adoption support services will help the child to remain safely in the custody of
20 the parent...” (i.e. leave out “ensure”). I have left the provision as it previously was written
21 pending discussion at our meeting.

22
23 During the online meeting I was asked to determine what the Utah statute provides on
24 post-adoption support services. The Utah statute provides that a prospective adoptive parent is to
25 receive, at a minimum, training on:

26
27 “(f) how to access post-placement and post-adoption services that may assist the family
28 to respond effectively to adjustment, behavioral, and other difficulties that may arise after the
29 high needs child is placed or adopted.”

30
31 This is similar to what is provided in Section 2-102(b)(4) of this act, although the Utah
32 act describes the function as “training” rather than “information.”

33
34 I have added a Fiscal Note regarding funding for post-adoption services available under
35 the Family First Prevention Services Act. I also bracketed the section in the event that the state
36 does not take advantage of the funding assistance under the act.

37

1 **Reporter's Comments**

2
3 This section is designed to allow the state to take advantage of funds available to it under
4 the federal Family First Prevention Services Act. Participation in the services made available
5 under that act will fund, or assist in funding, the post-adoption services specified in this section.
6

7 **SECTION 2-106. CHILD-PLACING AGENCY COMPLIANCE.** The [Department
8 of Child Protection] may investigate an allegation that a child-placing agency has failed to
9 comply with this [act] and bring a proceeding against a child-placing agency to enforce this [act].

10 **SECTION 2-107. RULES.** The [Department of Child Protection] shall adopt rules to
11 prescribe the content of and methodologies for providing the information required by Sections 2-
12 102 and 2-103, [and]the preparation required by Section 2-104[, and the support specified in
13 Section 2-105].

14 **Reporter's Notes**

15
16 **[ARTICLE] 3**

17
18 **PROHIBITED TRANSFERS OF ADOPTED CHILDREN**

19 **SECTION 3-101. PROHIBITED TRANSFER.**

20 (a) Except as otherwise provided in Section 3-102, a person, with the intent to renounce
21 or abandon the person's legal rights or responsibilities as a parent or guardian of an adopted
22 child, may not transfer physical custody of the child to, or allow a prior transfer of physical
23 custody to continue with, another person without complying with law of this state other than this
24 [act] relating to:

- 25 (1) adoption or guardianship;
26 (2) judicial transfer of custody; or
27 (3) placement by or through a child-placing agency.

1 (b) A transfer of physical custody of an adopted child in violation of this section is
2 [abandonment] of the child.

3 **Legislative Note:** *If the enacting state’s law uses a word other than “abandonment” to identify*
4 *the crime or offense that results from deserting a child without regard for the child’s physical*
5 *health, safety, or welfare, that word should replace the bracketed word “abandonment” in*
6 *subsection (b).*

7
8 **Reporter’s Notes**
9

10 Subsection (a): The Style Committee raised a question about the use of the word “person”
11 since that word includes entities other than individuals. I believe that we specifically intended to
12 include corporate and other entities that might have custody of the child.

13 The Committee also asked whether we wanted to change “person” to “parent or
14 guardian”? The clause might then be rewritten as follows: “a parent or guardian, with the intent
15 to renounce or abandon the parent’s or guardian’s legal rights or responsibilities as a parent or
16 guardian of an adopted child ...”. That language might be a bit cumbersome, but it would avoid
17 the use of the word “person.”

18
19 Pending discussion at our upcoming meeting, I’ve left the subsection as is.
20

21 Subsection (b): The Style Committee asked whether the subsection was intended to
22 create a crime for purposes of this act? If so, what is the penalty since it’s not stated? If not,
23 why are we stating it at all?
24

25 I believe that we intended to make a violation of this section a crime or at least an offense
26 and to designate it as an “abandonment” of the child (or whatever else the state calls
27 “abandonment” – see Legislative Note). Other law of the state would then specify what the
28 penalty or punishment, if any, might be. Therefore, I’ve left it as written pending any discussion
29 at our meeting.
30

31 **SECTION 3-102. EXCEPTIONS TO PROHIBITED TRANSFER.** A person may
32 transfer physical custody of an adopted child:

33 (1) to a parent, stepparent, grandparent, adult sibling, or adult uncle or aunt of the child;

34 (2) temporarily, if the person has no intent to renounce or abandon the legal rights or
35 responsibilities as a parent or guardian of the child; or

36 (3) under law of this state other than this [act] permitting informal relinquishment of
37 parental rights.

1 **Reporter’s Notes**

2
3 During the online meeting we decided we wanted to look further during our next meeting
4 at the issue of whether a transfer of custody to a person listed in subsection (1) should be
5 permitted if there is an intent to renounce or abandon the legal rights or responsibilities as a
6 parent.
7

8 **SECTION 3-103. MANDATED REPORTER.** If a [mandated reporter] under law of
9 this state other than this [act] reasonably believes this [article] has been violated, the mandated
10 reporter shall report the suspected violation to the [Department of Child Protection].

11 *Legislative Note: If the enacting state’s law uses a term other than “mandated reporter” to*
12 *identify an individual who, because of the individual’s profession or position, is required to*
13 *report any suspicion of child abandonment, abuse or neglect to a specified authority, that term*
14 *should replace the bracketed term “mandated reporter.”*
15

16 **Reporter’s Notes**

17
18 The Style Committee asked whether the term “mandated reporter” should be defined? I
19 reviewed the use of the term online and found many entries applying and describing it. Thus, it
20 seems to be a term with a sufficiently common usage that it doesn’t need a separate definition in
21 this act. However, if a definition is desired, we could add a new Section 3-101 with a definition
22 of “mandated reporter.” That definition might be defined along the following lines”
23

24 “Mandated reporter” means an individual who, because of the individual’s profession or
25 position, is required under law of this state other than this act to report any suspicion of child
26 abandonment, abuse or neglect to a specified authority.
27

28 I added a Legislative Note essentially using that definition in the event the state uses a
29 term other than “mandated reporter” to identify a person who has an obligation to report.
30

31 **SECTION 3-104. PROHIBITED ADVERTISING.**

32 (a) Except as provided in subsection (b), a person may not advertise or communicate,
33 orally or in a record, including on broadcast, in print media, or on the Internet, that the person
34 seeks to make, receive, or facilitate the transfer of physical custody of an adopted child if the
35 person knows the transfer would be a violation of Section 3-101.

36 (b) This section does not apply to dissemination of information by:

37 (1) the [Department of Child Protection] or a licensed child-placing agency

1 regarding the placement of a child for adoption, in a licensed institution, foster home, or group
2 home, or in the home of a guardian;

3 (2) a licensed foster-care center, adoption-resource center, or post-adoption
4 resource center regarding services available to adoptive parents;

5 (3) an agency licensed to provide caregiving to adopted children regarding
6 caregiving services; or

7 (4) an attorney licensed to practice law in this state regarding the attorney's
8 availability to provide legal services regarding the adoption of a child.

9 [(c) A person that violates this section is guilty of a [class B misdemeanor].]

10 **Reporter's Notes**

11
12 If I recall correctly, in our early deliberations, we identified violation of this section as a
13 "class B misdemeanor" simply as a placeholder and that we would return to discuss its final
14 treatment. The Style Committee also asked whether "class B misdemeanor" is the intended final
15 treatment.

16
17 If we mean to leave the designation of the crime open for the state legislature to insert its
18 own choice, I could use empty brackets in subsection (c) and add a Legislative Note telling the
19 state legislature to insert its choice.

20 21 **SECTION 3-105. INVESTIGATION; ENFORCEMENT.**

22 (a) If the [Department of Child Protection] reasonably suspects a violation of this
23 [article], the [Department] shall investigate the suspected violation.

24 (b) If the [Department of Child Protection] determines that a person has violated Section
25 3-101, the [Department] may, in the best interests of the adopted child:

26 (1) provide reunification support and services, if applicable, to the adoptive parent
27 and child;

28 (2) take the child into temporary protective custody under law of this state other
29 than this [act];

1 (3) bring an action in court under law of this state other than this [act] to terminate
2 the parental rights of the adoptive parent; or

3 (4) take other action under law of this state other than this [act] to protect the best
4 interests of the child.

5 (c) If the [Department of Child Protection] determines that a person has violated Section
6 3-104, the [Department] may:

7 (1) bring an action to enjoin the violation; or

8 (2) seek another remedy under law of this state other than this [act] to prevent the
9 person from communicating or making representations in violation of Section 3-104 or to
10 ameliorate the effects of advertising and representations.

11 **Reporter's Notes**

12
13
14 **[ARTICLE] 4**

15 **MISCELLANEOUS PROVISIONS**

16 **SECTION 4-101. TRANSITIONAL PROVISIONS.**

17 (a) [Article] 2 applies to a placement of an adopted child occurring more than 60 days
18 after [the effective date of this [act]].

19 (b) [Article] 3 applies to a physical-custody transfer of an adopted child and advertising
20 occurring after [the effective date of this [act]].

21 (c) If a physical-custody transfer of an adopted child occurred before [the effective date
22 of this [act]] and the custody of the child continues in the transferee in violation of Section 3-
23 101, the [Department of Child Protection] may take action in the best interests of the child in
24 accordance with Section 3-105(b).

25 **Reporter's Notes**

1
2
3
4
5

Reporter's Notes

SECTION 4-106. EFFECTIVE DATE. This [act] takes effect

Reporter's Notes