

*February 26, 2021*

Possible draft, Secs. 203 and 204

Art Gaudio

*ALTERNATIVE 1*

**(Revised) Section 203. Prohibited Custody Transfer**

(a) A custodian may not transfer custody of a child to another person, or allow a prior transfer of custody of a child to another person to continue, with the intent permanently to relinquish the custodian's rights and responsibilities regarding the child except through:

- (1) adoption or guardianship;
- (2) judicial award of custody;
- (3) placement by or through a child-placing agency; [or]
- (4) other judicial or tribal action[; or
- (5) . . . .].

(b) A person may not receive custody of a child, or act as an intermediary in a transfer of custody, if the person knows or reasonably should know the transfer violates subsection (a).

(c) Except as provided in Section 204, a violation of this section is a [misdemeanor].

(d) The fact that a transfer of custody of a child or a continuance of a prior transfer of custody of a child by a custodian may subsequently become permanent does not in and of itself establish the intention of the custodian, at the time of transfer or continuance, permanently to relinquish rights and responsibilities regarding the child.

***Legislative Note:*** *Subsection (a)(5) is bracketed. The state should insert here processes permitted by law of the state for transfer of custody of a child that are not included in the preceding subsections.*

**(Proposed new) Section 204. Affirmative Defense**

(a) If the [department of child protection] or [law enforcement authority] notifies a custodian or a person to whom custody of a child has been transferred that the transfer was in violation of Section 203, the custodian or person to whom custody of a child has been transferred may take action under subsection (b).

(b) Not later than [30] days after the [department of child protection] or [law enforcement authority] gives notice under subsection (a), a custodian or person to whom custody of the child has been transferred may:

(1) restore custody of the child to the custodian; or

(2) initiate and diligently pursue a process permitted by law of this state other than this act for transfer of custody of the child to the person to whom custody has been transferred.

(c) If the custodian or person to whom custody of a child has been transferred takes action under subsection (b), the action is an affirmative defense to prosecution of the custodian or person under Section 203(c).

(d) Nothing in this section prevents the [department of child protection] or [law enforcement authority] from taking appropriate action necessary to protect a child from harm.

*Renumber the following sections accordingly.*

***ALTERNATIVE 2***

**(Revised) Section 203. Prohibited Custody Transfer**

(a) A custodian may not transfer custody of a child to another person, or allow a prior transfer of custody of a child to another person to continue, with the intent permanently to relinquish the custodian's rights and responsibilities regarding the child except through:

(1) adoption or guardianship;

- (2) judicial award of custody;
- (3) placement by or through a child-placing agency; [or]
- (4) other judicial or tribal action[; or
- (5) . . . .].

(b) A person may not receive custody of a child, or act as an intermediary in a transfer of custody, if the person knows or reasonably should know the transfer is prohibited by subsection (a).

(c) The fact that a transfer of custody of a child or a continuance of a prior transfer of custody of a child by a custodian may subsequently become permanent does not in and of itself establish the intention of the custodian, at the time of transfer or continuance, permanently to relinquish rights and responsibilities regarding the child.

*Legislative Note: Subsection (a)(5) is bracketed. It is intended that the state insert here processes permitted by law of the state for transfer of custody of a child that are not included in the preceding subsections.*

**(Proposed new) Section 204. Curing of Prohibited Transfer; Violation**

(a) If the [department of child protection] or [law enforcement authority] notifies a custodian or a person to whom custody of a child has been transferred that the transfer was prohibited by Section 203, the custodian or person to whom custody of a child has been transferred shall {may} take action under subsection (b).

(b) Not later than [30] days after the [department of child protection] or [law enforcement authority] gives notice under subsection (a), a custodian or person to whom custody of the child has been transferred shall {may}:

- (1) restore custody of the child to the custodian; or

(2) initiate and diligently pursue a process permitted by law of this state other than this act for transfer of custody of the child to the person to whom custody has been transferred.

(c) Failure of a custodian or a person to whom custody of a child has been transferred to take action under subsection (b) to cure a transfer prohibited by Section 203 is a [misdemeanor].

(d) Nothing in this section prevents the [department of child protection] or [law enforcement authority] from taking appropriate action necessary to protect a child from harm.

*Renumber the following sections accordingly.*