

MEMORANDUM

From: Art Gaudio, Reporter

To: UTACA Drafting Committee members, advisors, and observers

Re: Issues memo on unregulated custody transfers and any differences between biological parent and adoptive parent

Date: January 27, 2020

I did a limited review to determine how many states currently have legislation limiting or prohibiting an unregulated custody transfer of a child.

A publication entitled “*Unregulated Custody Transfers of Adopted Children*” published by the Child Welfare Information Gateway provided much of the information referenced below.¹

Unregulated custody transfers

Thirty-one states, the District of Columbia and two territories² specifically allow a child custody transfer by means of a power or attorney or some other document executed by a parent. In most of these jurisdictions, the statutes specifically prohibit a custody transfer that does not comply with the statute. In others, the prohibition seems implicit. These states do not distinguish between transfers of a child by a biological parent and an adoptive parent.

Most of these jurisdictions impose some limits on the exercise of the power of attorney, usually in the form of a time limit on the power, the authority that may be delegated, the circumstances under which the authority may be delegated, or to whom the custody of a child may be transferred.

Time limit: In most of these jurisdictions the transfer of custody of a child is clearly intended to be temporary with at least nineteen states specifically putting time limits on the term of the transfer. The terms established are usually six months or a year, but one state limits the period to 180 days and another to 60 days. In some states, the length of the term is extended if the parent is being deploying in military service, usually for the term of the deployment.

Authority that may be delegated: These statutes specify a broad array of powers that may be delegated in the power of attorney, but they generally stop short of allowing the delegation to grant authority to consent to marriage or adoption of the child.

¹ <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/custody-transfers/> (2017). A copy of that document is attached.

² Alaska, Arizona, Arkansas, District of Columbia, Georgia, Guam, Hawaii, Idaho, Indiana, Iowa, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virgin Islands, West Virginia, and Wisconsin.

Circumstances under which the authority may be delegated: Some of these jurisdictions authorize the delegation of authority only if the parent is unable to provide care due to illness, incarceration, military service, the loss of a home due to natural disaster, or the child is absent due to school, sports, or social activities away from home.

To whom the authority may be delegated: In most of the states the child may be placed with a relative, although the degree of consanguinity or kinship varies. Two states limit the delegation of authority only to grandparents. In at least three states, the persons to whom the custody of a child may be transferred include individuals who had a prior established relationship with the child. In one state, the child may be transferred to a member of the child's Indian tribe.

States without regulation of custody transfers

In the remaining nineteen states there appears to be no statutory limit on the ability of a parent to transfer custody of the child.