

From: Courtney G. Joslin
Sent: Friday, November 6, 2020
To: Thomas S. Hemmendinger; Catherine Sakimura
Cc: David Biklen; Arthur Gaudio
Subject: Re: Unregulated Custody Transfers drafting project

Dear Drafting Committee:

Thank you for your work on this issue and for allowing us to participate in this drafting process.

We write now, however, to express our strong opposition to the current draft.

This project was initiated to address a narrow, targeted problem. However, the product addresses this targeted concern by way of a sweeping Act. Given the breadth of the draft text, there is reason to fear the people and circumstances most likely to be impacted by this Act would be situations not intended to be regulated by this Act. By sweeping in a range of transfers that fall well beyond the scope of the original project, we believe this Act could do substantially more harm than good.

We have consistently raised this concern and have urged the committee to narrow the scope of this Act. But rather than being narrowed, this most recent draft is indeed the most sweeping and by far the most troubling. This draft is the most troubling one to date because earlier drafts at least exempted transfers between close family members. Now, the Act statutorily defines some transfers between, for example, a mother and a grandmother as an act of child endangerment, even in the absence of any evidence of actual harm to the child. When a parent cannot care for their child, it is important for that parent to seek out someone else who can safely care for their child while they cannot. Policy should encourage parents to take this step. This Act does the opposite. It can result in penalizing the parent for making the best decision they can in the moment.

We do not believe that the committee intends to target or prohibit these practices. But as drafted, the Act could be interpreted—at least in the initial stages of the child welfare investigation—of applying to these and many other situations in which a parent is making a good decision on behalf of their child. And while a court might ultimately conclude that some or all of these circumstances do not meet the standard in the Act, that could be many years after the family has been separated, and after the child has been subjected to life-long trauma. Finally, by regulating through the child welfare process, this Act creates the strong possibility that this Act will be applied disproportionately to families of color—families who are already disproportionately by that system.

In sum, we strongly fear this Act will create much more harm than good. We urge reconsideration.

Sincerely,

Courtney Joslin & Cathy Sakimura