

DRAFT
FOR DISCUSSION ONLY

UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

**[Name change for consideration:
UNIFORM TRANSFER OF CHILD CUSTODY ACT]**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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ON UNIFORM STATE LAWS

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~~August 11~~ September 3, 2020

UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

[Name change for consideration: Uniform Transfer of Child Custody Act]

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1 UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

2 [Name change for consideration:
3 UNIFORM TRANSFER OF CHILD CUSTODY ACT]

4 Prefatory Note

5 Over a period of several years before the commencement of the drafting of this act,
6 public awareness began to focus on a situation that was developing in the parenting and custody
7 of some children {citations}.

8
9 In some cases, ~~the~~ parents found that after the birth or adoption of their child they
10 experienced considerable difficulty or even an inability in caring for or effectively managing the
11 child’s behavior. In many cases this may have been due to their own inexperience or lack of
12 training or preparation in child-rearing, or a byproduct of the child’s physical or psychological
13 health challenges at the time of the adoption, or both. Perhaps, after some initial unsuccessful
14 attempts to obtain assistance and not knowing where else to turn, some of these parents
15 transferred custody of their child to another person – a person whom they found through friends
16 or acquaintances or, in some cases, a person they found through the Internet or other media. In
17 most cases, no evidence showed that the person to whom the custody of the child had been
18 transferred had the ability to care for the child.

19
20 The transfer of the child’s custody was usually done without the involvement or
21 supervision of the state’s department of child protection or the use of legal process. As a result,
22 state agencies whose duties ~~include~~ included the provision of care and assistance to these
23 children had no knowledge of the transfer of custody of the child, the identity of the transferee,
24 or whether the transferee was qualified to care for the child.

25
26 In other cases, the instigation for the transfers might have been more sinister. Potential
27 child molesters or sex traffickers seeking children contacted parents who were experiencing
28 difficulties with their children through the Internet or other media. Thereafter custody of the
29 child was transferred to the previously unknown individual.

30
31 The Unregulated Transfers of Adopted Children Act [Uniform Child Transfer Regulation
32 Act] provides two different but related responses to situation described above.

33
34 First, Article ~~H~~ 2 prohibits, with limited exceptions, ~~the a parent’s~~ transfer of a child’s
35 custody to another person- if the parent intends to sever the parent’s rights and responsibilities
36 with regard to the child. The prohibition applies to a parent or guardian with custody of a child
37 as well as to a prospective adoptive parent with whom a child has been placed for adoption. ~~H~~ If
38 the parent does not intend to sever the parent’s rights and responsibilities with regard to the
39 child, the parent is allowed to transfer custody to certain persons whom the parent believes are fit
40 custodians of the child. The article prohibits the use of advertising, including use of the Internet
41 and social media, to solicit the transfer of a child’s custody. The Article also provides the state
42 department of child protection with the authority to investigate suspected violations of the act
43 and the means to enforce it.

1 Second, Article ~~HH~~ 3 deals with the situation of some children whose physical or
2 psychological health at the time of a proposed placement for adoption would predict that the
3 adoptive parents might have difficulty in caring for or effectively managing the child’s behavior.
4 This Article seeks to assure that prospective adoptive parents are informed about, and given
5 instruction on dealing with, these health or behavioral issues should they arise; and before they
6 arise. It requires that the child-placing agency through which an adoption is facilitated provide
7 the prospective adoptive parents with: (1) general information about adopting children with these
8 health or behavioral issues; (2) specific information about the physical and psychological health
9 of their prospective adoptive child; and (3) guidance and instruction on dealing with the
10 challenges that may present themselves in rearing ~~these children~~ the child placed with them. It
11 also requires the [child-placing agency] [state department of child protection] to provide certain
12 post-placement and post-adoption support services to the adoptive child and parent to help
13 preserve the adoption.
14

15 Background

16
17 In 2013, after attention began to focus on unregulated custody transfers, a U.S. Working
18 Group was formed, consisting of representatives from several federal agencies, as well as state
19 child welfare organizations and the National Association of Attorneys General. The Working
20 Group produced a report specifying three issues that should be addressed in legislation: (1) a
21 clear provision stating that an unregulated custody transfer is a violation of state law; (2)
22 authorization for state protective services agencies to investigate and interdict instances of
23 unregulated transfers; and (3) a requirement that child-placing agencies provide better
24 information and training for prospective adoptive parents so that they know what to anticipate
25 when adopting children with certain special needs and how to deal with them.
26

27 Although several states adopted statutes dealing in some fashion with the issues involved
28 in unregulated child custody transfers, the Utah statute {citation} closely ~~follows~~ followed the
29 Working Group recommendations. That statute provided some of the initial background and
30 drafting input for this uniform act. Members of the Working Group and the Utah legislative
31 drafting service were observers for the drafting of this uniform act and provided further critical
32 input.
33

34 Initially, the scope of this act was limited to unregulated transfers of children who were
35 the product of inter-country adoptions. In discussions among committee members and observers,
36 it became clear that prospective adoptive parents of children with certain other special needs
37 required the same information and training as the prospective adoptive parents of children in
38 inter-country adoptions. As a result, the committee recommended that the scope of the act be
39 expanded to apply not only to children in the adoption of inter-country adoptions children but to
40 the adoption of all children with certain special needs. That recommendation was approved.
41

42 After further discussion, the committee decided to recommend that the act be bifurcated –
43 one article (Article 2) prohibiting unregulated child custody transfers and authorizing state
44 departments of child protection to investigate and interdict violations, and another article (Article
45 3) requiring provision of information and training for prospective adoptive parents. The article
46 prohibiting unregulated child custody transfers applies not only to custody transfers of adopted

1 children with special needs but also to unregulated custody transfers of any child. A parent's
2 unregulated custody transfer of a biological child is just as problematic and dangerous as an
3 unregulated custody transfer of an adopted child. The committee's recommendation was
4 approved.

5
6 **Relationship to the Interstate Compact on Placement of Children**

7
8 The persons to whom a parent may transfer custody of a child in Article 2 of this act is
9 derived from a list of permitted transferees as contained in the Interstate Compact on Placement
10 of Children. While the Compact applies to an interstate transfer of a child's custody, this act
11 applies to a transfer of a child's custody, regardless of whether the transfer is interstate or
12 intrastate.

1 **UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT**

2 **[Name change for consideration:**
3 **UNIFORM TRANSFER OF CHILD CUSTODY ACT]**

4 **[ARTICLE] 1**

5 **GENERAL PROVISIONS**

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

9 **Reporter’s Notes**

10
11 Originally, the scope of this act was limited in its application to adopted children. Since
12 that time, at the request of the drafting committee, the scope of Article 2 has been expanded to
13 apply to all children. Thus, it is necessary to choose a new name for the act.
14

15 Various titles were considered by the drafting committee. In making its decision, the
16 committee considered the subject matter of the act, how certain terms might be perceived by
17 persons affected by the act, and potential confusion with other uniform laws. The committee has
18 tentatively selected “Uniform Transfer of Child Custody Act” as the new name of the act. The
19 committee will further consider the naming of the act.
20

21 Final determination of the name must await a decision by the Executive Committee.
22

23 **SECTION 102. DEFINITIONS.** In this [act]:

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

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

27 (3) “Custody” means exercising physical care and supervision of a child.

28 (4) “Guardian” means a person recognized as a guardian under law of this state other than
29 this act.

30 ~~(4)~~(5) “Parent” means an individual recognized as a parent under law of this state other
31 than this [act].

1 ~~(5) “Guardian” means a person recognized as a guardian under law of this state other than~~
2 ~~this act.~~

3 (6) “Person” means an individual, estate, ~~trust, partnership~~, business or nonprofit entity,
4 public corporation, government or governmental subdivision, agency, or instrumentality, or other
5 legal entity.

6 (7) “Record” means information that is inscribed on a tangible medium or that is stored in
7 an electronic or other medium and is retrievable in perceivable form.

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

11 **Legislative Note:** *Eighteen years of age is used in paragraph (1) because it is the common age*
12 *of majority in the United States. However, if the state’s age of majority is defined as a different*
13 *age, it should be inserted instead.*

14 **Reporter’s Notes**

15
16
17 In subdivision (34), should language be added to limit the definition of a parent ~~be~~
18 ~~limited~~ to a parent other than ~~a parent one~~ who has been determined to be a danger to the child?
19 In particular, Section 201 provides that the prohibitions of Article 2 do not apply to a transfer of
20 custody to a parent as defined in this subsection.

21
22 If a parent who has been determined to be a danger to the child should be excluded from
23 the definition of parent, should the exclusion require a judicial determination of endangerment or
24 termination of parental rights? What about a determination that a parent poses a danger to the
25 child made by the Department of Child Protection? Would it be better to place the exclusion
26 here in the definitions section or in Section 201 as part of the description of a parent to whom the
27 Article does not apply?

28 **Preliminary Comments**

29
30 (1) The definition of a “child” is limited to an unemancipated child who is under [18]
31 years of age. The provisions of this act are focused on a child who is in the custody of a parent.
32 Since an emancipated individual is no longer in the custody of that individual’s parent that
33 individual is not a child for purposes of this act.

34
35 (2) A “child-placing agency” is a person which is authorized under state or federal law to
36 identify or place a child for adoption.

1 (3) The definition of “custody” is derived from, and is substantially similar to, the
2 definition of “physical custody” as used in Section 102(14) of the Uniform Child-Custody
3 Jurisdiction and Enforcement Act. Article 2 of this act is focused on situations in which a parent
4 or guardian transfers the physical custody of a child. Although a transfer of “legal custody” of a
5 child, i.e. the right to make significant life decisions for the child (*see* Uniform Nonparent
6 Custody and Visitation Act, Section 2(6));)) may sometimes be involved in a child-custody
7 transfer, it is the transfer of physical custody that potentially may endanger a child. Therefore,
8 Article 2 is focused on transfers of physical custody regardless of whether there is also a transfer
9 of legal custody.

10
11 ~~(5)(4) A “guardian” is a person who is recognized under other state law as the guardian of~~
12 ~~a child.~~

13
14 (5) The definition of “parent” is determined by other law of the enacting state and is
15 derived from, and substantially similar to, the definition of “parent” as used in Section 2(8) of the
16 Uniform Nonparent Custody and Visitation Act. It includes an individual who has established a
17 parent-child relationship with the child in accordance with the various modes for establishing
18 parentage under state law (*see, e.g.,* Uniform Parentage Act, Section 201).

19
20 ~~(5) A “guardian” is a person who is recognized under other state law as the guardian of a~~
21 ~~child.~~

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

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

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

37 38 **Preliminary Comments**

39
40 This act does not apply to an Indian child to the extent the application of this act would
41 conflict with the Indian Child Welfare Act, 25 U.S.C. Sections 1901 through 1963[, as
42 amended].

1 [ARTICLE] 2

2 PROHIBITED CUSTODY TRANSFER

3 SECTION 201. SCOPE. This [article] does not apply to a transfer of custody of

4 a child to ÷

5 ~~(1) a parent of the child~~ or an individual a person who, at the time of the transfer, is in
6 the status of *in loco parentis* with the child ~~;~~ ~~or~~

7 ~~(2) a person for the purposes of:~~

8 ~~(A) adoption or guardianship;~~

9 ~~(B) judicial transfer of custody; or~~

10 ~~(3) placement by or through a child placing agency.~~

11 **Legislative Note:** *If the state law recognizes the doctrine of “in loco parentis”, the state should*
12 *adopt the bracketed provision.*

13
14 **Reporter’s Notes**

15
16 Should we define “*in loco parentis*” in order to distinguish it from situations that might
17 arise under Section ~~202(a)203(b)(4)~~? E.g. Section ~~202(a)203(b)(4)~~ would allow a transfer of a
18 child’s custody to a boarding school (or an individual at the school) which, in some definitions,
19 is then *in loco parentis* with the child. A definition of *in loco parentis* for purposes of this
20 section would prevent the two provisions from overlapping or perhaps conflicting in some cases.
21 A definition such as that under Arizona law might resolve the issue: “‘In loco parentis’ means a
22 person who has been treated as a parent by a child and who has formed a meaningful parental
23 relationship with a child for a substantial period of time.” *ARS 25-401(1)*.

24
25 A Department of Child Protection may transfer its Since guardians and an individual with
26 whom a child has been placed for adoption have the right to the custody of a child to a foster care
27 provider. Should placement of a their child by the Department of Child Protection, should they
28 be added to the list of persons excluded transfers in subsection (b), perhaps in subsection
29 (b)(3)? from the scope of this article?

30
31 **Preliminary Comments**

32
33 The overall purpose of this Article is to prevent a parent, guardian, or a person with
34 whom a child has been placed for adoption from transferring the custody of that child to a third
35 person who does not have a right to custody of the child and who poses a risk to the child’s
36 safety and well-being.

1 Since a parent has a right to custody of a child, ~~subdivision (1) this section~~ excludes from
2 the operation of this Article a transfer of custody of a child to the child's parent {unless
3 terminated or limited in a judicial proceeding or determination of the Department of Child
4 Protection; see Reporter's Note to Section 102(45) re: excluding parent who poses a danger to
5 the child}.

6
7 Some states recognize the doctrine of "in loco parentis." Under that doctrine, an
8 individual who has been treated as a parent by a child and who has formed a meaningful parental
9 relationship with a child for a substantial period is treated as a parent. The bracketed clause in
10 subdivision (1) excludes a transfer of custody of a child to an individual who is *in loco parentis*
11 from the operation of this ~~Article~~ article. If an enacting state recognizes this doctrine, it should
12 adopt the bracketed clause.

13
14 ~~Subdivision (2) excludes from the operation of this Article a transfer of custody of a child
15 as part of certain proceedings or processes recognized and governed by other state law. Thus,
16 this Article does not apply to a transfer of custody of a child to a prospective adoptive parent
17 incident to an adoption, a guardian incident to a guardianship, or a transferee designated by a
18 judge in a judicial transfer of custody. Nor does it apply to the placement of a child with a
19 prospective adoptive parent by a child-placing agency.~~

20
21 **SECTION 202. PROHIBITED TRANSFER OF CUSTODY.**

22 (a) A parent or guardian of a child, or an individual with whom a child has been placed
23 for adoption, may ~~make or allow a transfer of custody to a person whom the parent reasonably
24 believes to be a fit custodian and is:~~

25 (1) ~~the child's stepparent, grandparent, adult sibling, or adult uncle or aunt;~~

26 (2) ~~an adult individual with whom the parent has a pre-existing personal
27 relationship before the transfer of custody;~~

28 (3) ~~an Indian custodian [or member of the child's customary family unit as
29 recognized by the child's indigenous group by the law of this state]; or~~

30 (4) ~~a person in accordance with the law of this state other than this [act]:~~

31 (A) ~~for the purpose of exercising authority on behalf of the parent or
32 guardian about the health, safety, or welfare of the child; and~~

33 (B) ~~during a stated period not to exceed [12 months].~~

1 (b) Transfer of custody under subsection (a) does not relieve the parent or guardian of
2 parental rights or responsibilities.

3 ~~**Legislative Note:** In subsection (a)(3), if law of the state allows transfer of custody to a member
4 of the child's customary family unit as recognized by the child's indigenous group, the state
5 should adopt the bracketed provision.~~

6
7 ~~In subsection (a)(4)(B), the state should select and insert the maximum period for a transfer of
8 custody.~~

9 10 **Reporter's Notes**

11
12 Subsection (a)(4) might include custody transfers in situations such as, for example, the
13 deployment of a parent in the armed forces. The right to transfer custody in such situations
14 might already be covered by other state law and allow a transfer for a duration other than 12
15 months. If a state has several laws of this sort, they may provide different durations. Should we
16 provide a specific exclusion of situations for which other state law authorizes transfer of a child's
17 custody for a specific period?
18

19 **Preliminary Comments**

20
21 Section 202 sets out a list of third persons to whom custody of a child may be transferred
22 under this Article. It applies to a custody transfer made by a parent, who is defined in Section
23 102(4). It also applies to a custody transfer made by a guardian of the child, who is defined in
24 Section 102(5). Finally, it applies to a custody transfer made by a prospective adoptive parent
25 with whom a child has been placed in anticipation of a subsequent adoption.
26

27 As a requirement for a permissible transfer under this section, the parent, guardian, or
28 prospective adoptive parent must have a reasonable belief that the third person to whom the
29 custody of the child is being transferred will be a fit custodian of the child. The parent, guardian,
30 or prospective adoptive parent must reasonably believe that the third person will properly
31 supervise and provide a safe and healthy environment for the child.
32

33 Subsection (a)(1) provides a list of relatives to whom a parent, guardian, or prospective
34 adoptive parent may transfer custody of a child. It is similar to the list of relatives provided in
35 Article VIII, subsection (a) of the Interstate Compact on the Placement of Children. The
36 relatives listed in the subsection are the relatives of the child and, in the case of an adopted child,
37 the relatives in the child's adoptive family.
38

39 Subsection (a)(2) recognizes the fact that there are many individuals beyond the limited
40 list of relatives in subsection (a)(1) who might be equally qualified to provide a safe and healthy
41 environment for the child. Such an individual might be a more remote relative who, due to the
42 nature of the family's interactions, has a personal relationship with the parent equal to or even
43 closer than that of a listed relative in subsection (a)(1), and with whom the parent has comfort
44 and assurance in the care of the child.

1 The subsection also recognizes as qualified transferees of the child's custody individuals
2 who are not relatives but who have an existing personal relationship with the parent before the
3 time of the transfer. The nature of these relationships is broad and varied. They might be close
4 neighbors, long-standing friends, constant members of the parent's religious congregation, or
5 members of the parent's ethnic customary family.
6

7 Subsection (a)(3) specifically recognizes an Indian custodian as an individual to whom a
8 parent may transfer custody of a child. As relevant to this act, an Indian custodian is an Indian
9 individual to whom temporary physical care, custody, and control of an Indian child has been
10 transferred by the parent. An Indian custodian is recognized under the Indian Child Welfare Act,
11 25 USC Section 1903.
12

13 State law might also recognize that a parent may transfer custody of a child to a member
14 of the child's customary family unit as recognized by the child's indigenous group. An example
15 of this exists in Hawaii {citation}. The bracketed clause in this subsection specifically
16 recognizes that member of the child's customary family as a permitted transferee.
17

18 Subsection (a)(4) recognizes that a temporary transfer of a child's custody might be
19 highly convenient or even necessary in some circumstances. For example, a child might be
20 enrolled by a parent in a boarding school for a semester or a year. During that period the child
21 will be in the physical custody of the boarding school. The boarding school will oversee the day-
22 to-day care and supervision of the child. This subsection permits the transfer of custody of the
23 child to the boarding school for a period up to [12 months].
24

25 Subsection (b) states that, although a parent is permitted to transfer custody of a child in
26 accordance with subsection (a), that transfer does not relieve the parent or guardian of parental
27 rights or obligations. Although the parent will not be providing day-to-day care and supervision
28 for the child, the parent will still have the duty to provide for necessary financial support of the
29 child.
30

31 **~~SECTION 203. PROHIBITED TRANSFER OF CUSTODY.~~**

32 ~~(a) Except as permitted in Section 202, a parent or guardian of a child, or an individual~~
33 ~~with whom a child has been placed for adoption, may not make transfer custody or allow a~~
34 ~~transfer of custody of the child to another person; with the intent of severing the rights and~~
35 ~~responsibilities of the parent, guardian, or individual regarding the child except through:~~

36 ~~(1) adoption or guardianship;~~

37 ~~(2) judicial award of custody;~~

38 ~~(3) placement by or through a child-placing agency; or~~

1 (4) other judicial or tribal action.

2 (b) A person may not knowingly solicit or facilitate a transfer of the custody of a child in
3 violation of subsection (a).

4 (c) A violation of this section is [endangerment of a child].

5 **Legislative Note:** *In subsection (c), if the enacting state uses a term or terms other than*
6 *“endangerment of a child” to identify the crime, offense, or ground for child welfare intervention*
7 *that results from deserting a child without regard for the child’s physical health, safety, or*
8 *welfare, or soliciting a transfer of custody of a child, that term or terms should replace the*
9 *bracketed term “endangerment of a child”.*

10 11 **Reporter’s Notes**

12
13 Subsection (a) incorporates an “intent” aspect, which prohibits a custody transfer if there
14 is an intent to sever the parental rights and responsibilities of the parent unless the transfer is
15 accomplished in accordance with processes authorized by other law of the state. This conforms
16 the act better with three federal bills dealing with unregulated custody transfers, which were
17 introduced in the 116th Congress, 1st Session – H.R. 1389, S. 1446, and H.R. 2480. All three of
18 the bills prohibit a custody transfer with the intent of severing the parent’s relationship with the
19 child unless the transfer is done in conformance with state and federal laws. It also resolves
20 some of the issues raised in the Informal ULC Session on 8/25/20.

21
22 In subsection (a), is “sever” the best term to use? Would another term such as “dissolve”
23 be more appropriate if the parent’s action is more passive?

24
25 Should placement of a child by the Department of Child Protection be added to the list of
26 excluded transfers in subsection (a)(3)?

27
28 Subsection (b) provides that a person may not “solicit or facilitate” a transfer in violation
29 of subsection (a). In Section 204(a), a parallel provision on advertising and communication,
30 provides that a person may not seek to “receive or facilitate” a transfer in violation of Section
31 203 202. Parallel treatment suggests might suggest that we either use “solicit or facilitate” or
32 “receive or facilitate” in both places.

33 34 **Preliminary Comments**

35
36 Subsection (a) sets out the essential objective of this ~~Article~~ except as permitted in
37 Section 202, article – a parent, guardian, or an individual with whom a child has been placed for
38 adoption may not transfer custody of the child to another person: with the intent of relinquishing
39 the parent’s, guardian’s, or individual’s rights and responsibilities with regard to the child. A
40 transfer of custody of the child by whatever means, ~~such as~~ including by power of attorney, is
41 not permitted.
42

1 The intent aspect of this section is significant. This prohibition article is designed to
2 prevent the transfer of custody of a child through unregulated means and a termination of the
3 parent’s, guardian’s, or individuals continued relationship with the child. A transfer of custody
4 without that intent may be permissible if it complies with Section 203.
5

6 This section is designed to protect a child from potentially being transferred into the
7 custody of a person who might not be fit to provide for the health, safety, and well-being of the
8 child. It ~~will~~ is also designed to protect ~~the a~~ child from being transferred into the custody of a
9 person who might be a child trafficker or sexual molester.
10

11 This section prohibits a transfer of custody of a child unless the transfer is accomplished
12 through proceedings or processes recognized and governed by other state law. Thus, this section
13 does not prohibit a transfer of custody of a child to a prospective adoptive parent incident to an
14 adoption, to a guardian incident to a guardianship, or to a transferee designated in a judicial
15 award of custody or other judicial or tribal action. Nor does it apply to the placement of a child
16 with a prospective adoptive parent by a child-placing agency.
17

18 Subsection (a) applies to a custody transfer made by a parent, who is defined in Section
19 102(5). It applies to a custody transfer made by a guardian of the child, who is defined in
20 Section 102(4). Finally, it applies to a custody transfer made by “an individual with whom a
21 child has been placed for adoption.”
22

23 An individual with whom a child has been placed for adoption is separately identified ~~in~~
24 ~~subsection (a).~~ During~~because, during~~ the period between a child’s placement with the
25 individual and the finalization of the child’s adoption, the individual is not yet the parent of the
26 child. ~~In addition~~ Nor, in most cases, is the individual ~~is also not~~ a guardian of the child in the
27 sense that a guardian is appointed by a judicial decree. ~~Therefore,~~ In order to protect a child from
28 an unregulated custody transfer by the individual, the individual is specifically included among
29 those ~~who are prohibited from making a transfer other than as permitted by Section 202~~ to whom
30 this section applies.
31

32 Subsection (b) prohibits ~~solicitation~~ a third party from soliciting a transfer of custody of a
33 child ~~custody transfer~~ that is prohibited in subsection (a). In doing so, it imposes a prohibition
34 on any person seeking to obtain the transfer of a child’s custody that is reciprocal with the
35 prohibition imposed ~~in subsection (on a).~~ parent, guardian, or individual with whom a child has
36 been placed for adoption. Subsection (b) also prohibits ~~any~~ a person from acting as an
37 intermediary to facilitate a transfer of custody prohibited in subsection (a).
38

39 Subsection (c) provides that a violation of this section is treated as child endangerment.
40 The penalties for violating the section will be determined by other state law dealing with child
41 endangerment. The subsection applies to a parent, guardian, or individual with whom a child has
42 been placed for adoption who transfers custody of a child. It also applies to a person who
43 receives or solicits the transfer of a child and a person who facilitates the transfer of a child.
44

45 **SECTION 204. PROHIBITED ADVERTISING 203. ALLOWABLE TRANSFER**

1 **OF CUSTODY.**

2 (a) This [article] does not prohibit a parent or guardian of a child, or an individual with
3 whom a child has been placed for adoption, from transferring custody or allowing a transfer of
4 custody of the child if:

5 (1) the transfer is to a person listed in subsection (b);

6 (2) the transfer is made without the intent of severing the rights and
7 responsibilities of the parent, guardian, or individual regarding the child; and

8 (3) the parent, guardian, or individual reasonably believes the person to whom
9 custody of the child is transferred to be a fit custodian of the child.

10 (b) The persons to whom custody of a child may be transferred under subsection (a) are:

11 (1) the child's stepparent, grandparent, adult sibling, adult uncle or aunt, guardian,
12 or other adult relative;

13 (2) an adult friend of the parent, guardian, or individual with whom the child is
14 place for adoption and with whom the child is familiar;

15 (3) an Indian custodian[or member of the child's customary family unit as
16 recognized by the child's indigenous group by the law of this state]; and

17 (4) a person as permitted by law of this state other than this act[:

18 (A) during the period of the parent's, guardian's, or individual's:

19 (i) deployment in the armed forces of the United States;

20 (ii) incarceration in a penal or disciplinary institution; [or]

21 (iii) residential treatment for medical, mental, or behavioral
22 reasons; [or

23 (iv) other circumstances permitted by law of the state;] or

1 (B) for a period of not more than [12 months]] for purposes of the
2 education, enrichment, health, safety, or welfare of the child.

3 (c) Transfer of custody under this section does not relieve the parent, guardian, or
4 individual of rights and responsibilities regarding the child.

5 *[Legislative Note: Subsection (b)(4)(A)(iv) is bracketed and intended to allow a state to insert*
6 *additional circumstances under which the transfer of a child's custody is permitted for a*
7 *specified period under the law of the state.]*

8
9 **Reporter's Notes**

10 The title of this section in a previous version had been "Permitted Transfer of Custody."
11 In another it had been simply "Transfer of Custody." The latter title seemed to convey no
12 content about the purpose of the section, and I didn't use it. The former title might be
13 appropriate, but it seems that the section is not so much permitting the transfer as it is simply
14 saying that it is "unprohibited." However, the word "Unprohibited" in the title seems odd. So,
15 for the time being, I used "Allowable". Suggestions?

16
17 Subsection (b)(1) is the same as in the prior version with the addition of "guardian" and
18 "other adult relative," which are both contained in the federal bills. A possible concern with
19 "other adult relative" is that it puts no limit on the degree of consanguinity of that relative. That
20 relative could be quite remote and have no close relationship with the child. If the "other adult
21 relative" language were removed from this subsection, the same adult relative might nevertheless
22 be permitted as a transferee if the relative were a friend of the parent with whom the child is
23 familiar, as provided in subsection (b)(2). Should "other adult relative" be retained here?

24
25 Subsection (b)(2) is different from its analogue in the prior version. In the earlier version
26 we identified the transferee as "an adult individual with whom the parent has a pre-existing
27 personal relationship." The current version is taken from the federal bills mentioned above with
28 minor modifications. This version may be easier to understand and apply than the prior version,
29 particularly considering some of the comments about the prior version in that regard during the
30 Informal Session. However, this version may be more limiting than the prior version. Why does
31 the individual have to be a "friend"? Why must the child be familiar with the individual? Would
32 a person who is not a friend or with whom the child is not familiar be permitted under subsection
33 (4)?

34
35 Subsection (b)(3) is the same as in the prior version. The language in the federal bills is
36 different. The federal bills allow a transfer to "a member of the federally recognized Indian tribe
37 of which the child is also a member." This is more limiting in at least two ways. The language
38 used here is not limited to "a member of a federally recognized Indian tribe;" it may include a
39 state recognized tribe. In addition, the federal bills provide no reference to "a member of the
40 child's customary family." Should we continue with the current language?

1 Subsection (b)(4) deals with “catchall” circumstances in which custody transfers are
2 allowed. Portions of it are bracketed. The brackets are intended to indicate language about
3 which the committee is uncertain; they do not indicate that the language will be optional for
4 adoption by a state. The committee is uncertain about whether to include the listed/bracketed
5 specific circumstances in which a transfer of custody is allowed. Would it be better to be more
6 general and merely require that a custody transfer be permitted by other law of the state? The
7 committee is also uncertain about whether to include a specific [12 month] limitation on the
8 transfer.

9
10 If the bracketed language is retained: Subsection (b)(4)(A) would identify three specific
11 circumstances in which custody transfers are allowed. Subsection (b)(4)(A)(4) would allow a
12 state to add any other circumstances not listed that may be permitted under its law.

13
14 Subsection (b)(4)(B) would recognize that there are many other “everyday” situations in
15 which custody of a child may be transferred. They are too numerous and indiscernible to specify
16 but include situations such as a teenager who lives with a relative or best friend’s family to finish
17 high school, or a child who attends boarding school or summer camp, travels to and from school
18 in another parent’s carpool, or is in the care of a babysitter.

19
20 Custody transfers are permitted in these situations for a period not to exceed [12 months].

21
22 If the bracketed language is removed: Subsection (b)(4) would allow a custody transfer
23 to “a person as permitted by law of this state other than this act for purposes of the education,
24 enrichment, health, safety, or welfare of the child.” If the state had existing law regarding
25 transfer of custody in the event of deployment, incarceration, and residential treatment, they
26 would continue to be allowed. Similarly, transfer of custody in situations mention above
27 regarding finishing school, attending boarding school or summer camp, etc. would also be
28 permitted. However, this version is more open-ended and would allow other to fit under its
29 rubric if they were permitted by law of the state.

30
31 While this exception is more open-ended, it should be remembered that it is nevertheless
32 circumscribed by subsection (a), which requires that the custody transfer be made without an
33 intent to relinquish the parent’s rights and responsibilities regarding the child and that the parent
34 reasonably believes the transferee to be a fit custodian.

35
36 A few observers objected to provisions in this act that expand the right of a state
37 Department of Child Protection to intrude into family homes. They claim that too often the
38 intrusion is unnecessary and that the child protective system removal of a child from a home is
39 harmful, not helpful, to the child. They also point to research that indicates that families of color
40 are disproportionately impacted by removal of a child from the family home.

41
42 It is beyond the scope of this drafting committee to review the child welfare system.
43 However, to address some of the concerns expressed, the draft expands the group of people to
44 whom a parent may transfer custody of a child without child welfare or court approval. Thus,
45 subsection (a)(2) allows a parent to transfer custody of a child to a person whom the parent
46 “reasonably believes . . . to be a fit custodian of the child.” Subsection (b) then specifies a list of

1 persons who may be transferees of custody.

2
3 Subsection (c) is derived from subsection 202(b) of the prior version. It may, in fact, be
4 unnecessary in this version since subsection (a)(2) specifically provides that a parent may only
5 make a custody transfer under this section if it is without the intent to relinquish the parent's
6 rights and responsibilities regarding the child. I have left it as is, for now, pending our further
7 consideration. Should it be removed?

8 9 Preliminary Comments

10
11 Subsection (a) provides that a parent, guardian, or individual with whom a child is placed
12 may transfer custody of a child to a person listed in subsection (b) provided the parent does not
13 intend to relinquish the parent's rights and responsibilities with regard to the child. This lack of
14 intent distinguishes an allowed custody transfer in this section from a prohibited custody transfer
15 in Section 202 where a parent does intend to relinquish parental rights and responsibilities.

16
17 In addition, subsection (a) requires that a parent making a custody transfer of a child must
18 believe that the person to whom custody is being transferred is a "fit custodian" of the child. The
19 parent, guardian, or prospective adoptive parent must reasonably believe that the third person to
20 whom custody is transferred will properly supervise and provide a safe and healthy environment
21 for the child.

22
23 Subsection (b)(1) provides a list of relatives to whom a parent, guardian, or prospective
24 adoptive parent may transfer custody of a child. It is similar to the list of relatives provided in
25 Article VIII, subsection (a) of the Interstate Compact on the Placement of Children. Unlike the
26 Compact, it does not include a parent of the child since a parent is excluded from the scope of
27 this act in Section 201. The relatives listed in the subsection are the relatives of the child and, in
28 the case of an adopted child, the relatives in the child's adoptive family.

29
30 Subsection (b)(2) recognizes the fact that there are many individuals beyond the list of
31 relatives in subsection (a)(1) who might be equally qualified to provide a safe and healthy
32 environment for the child. Such an individual might be an adult friend of the parent, guardian, or
33 individual with whom the child is placed for adoption who is not a member of the child's family.
34 This subsection also requires that the child must be familiar with the friend of the parent. This is
35 required in order to protect the child from any psychological shock that might attend a transfer of
36 custody of the child to a person previously unknown to the child.

37
38 Subsection (b)(3) specifically recognizes an Indian custodian as an individual to whom a
39 parent may transfer custody of a child. As relevant to this act, an Indian custodian is an Indian
40 individual to whom temporary physical care, custody, and control of an Indian child has been
41 transferred by the parent. An Indian custodian is recognized under the Indian Child Welfare Act,
42 25 USC Section 1903. If state law recognizes an Indian tribe {citation} under its law that is not
43 recognized under federal law, an Indian custodian of that tribe would be included.

44
45 State law might also recognize that a parent may transfer custody of a child to a member
46 of the child's customary family unit as recognized by the child's indigenous group. An example

1 of this exists in Hawaii {citation}. The bracketed clause in this subsection specifically
2 recognizes that member of the child’s customary family as a permitted transferee.

3
4 Subsection (b)(4) recognizes that transfer of a child’s custody to persons not specified in
5 the prior lists might, nonetheless, be highly convenient or even necessary in some circumstances.
6 For example, a parent who is deployed in the U.S. armed services may, under other law of the
7 state, transfer custody of a child to a designated individual for the period of the deployment.
8 This subsection recognizes that transfer.

9
10 Other “everyday” situations might also occur. They might include a teenager who lives
11 with a best friend’s family to finish high school, or a child who attends boarding school or
12 summer camp, travels to and from school in a carpool, or is in the care of a babysitter. This
13 subsection recognizes the transfer of custody of a child that occurs in those situations.

14
15 Subsection (b) states that, although a parent is permitted to transfer custody of a child in
16 accordance with subsection (a), that transfer does not relieve the parent or guardian of parental
17 rights or obligations. Although the parent will not be providing day-to-day care and supervision
18 for the child, the parent will still have the duty to provide for necessary financial support of the
19 child.

20
21 **SECTION 204. PROHIBITED ADVERTISING OR COMMUNICATION.**

22 (a) A person may not advertise or communicate, orally or in a record, including by
23 broadcast or in print or electronic media, that the person seeks to make, receive, or facilitate the
24 transfer of custody of a child if the person knows or reasonably should know the transfer would
25 violate Section ~~203202~~(a).

26 [(b) A violation of subsection (a) is a [misdemeanor].]

27 **Reporter’s Notes**

28
29 Should the reference in this section to Section ~~203202~~(a) be more general to Section
30 ~~203202~~? The ~~prohibition on provision that prohibits~~ advertising ~~that for~~ a person seeking to
31 receive or facilitate a transfer of custody relates to actions that are prohibited in Section
32 ~~203202~~(b) and not in Section ~~203202~~(a). Would it be better to simply refer generally to
33 Section ~~203202~~?

34
35 Regarding the word “receive”, see Reporter’s Notes to Section ~~203202~~.

36
37 Although the drafting committee has designated a violation of this section to be a
38 misdemeanor in subsection (b), it must still decide whether it wishes to be more specific as to the
39 degree or nature of the misdemeanor.

1 **Preliminary Comments**

2
3 Unregulated child-custody transfers usually are promoted by some form of advertisement
4 or communication. This has usually been by use of the Internet where a parent might search for
5 advertisements or notices from persons seeking a child. However, other forms of
6 communication might be used such as newspaper or word of mouth. Subsection (a) prohibits the
7 use of any advertisement or communication, no matter what its form, or whether it is oral or
8 writing. It specifically identifies print or electronic media but is not necessarily limited to those
9 media.

10
11 The advertising prohibition applies to a person who seeks to make a transfer of custody
12 of a child in violation of Section 203202, i.e. a parent or guardian. It applies to a person who
13 solicits a transfer of custody of a child, i.e. a third party seeking a child. It also applies to an
14 intermediary who seeks to facilitate the transfer of a child.

15
16 Subsection (a) applies if the person making the advertisement or communication knows
17 or reasonably should know that the transfer of child-custody would violate Section 203202.
18 Absolute knowledge that the advertisement or communication would violate Section 203202 is
19 not required; it is sufficient that the party reasonably should know that it would violate the
20 section. Nevertheless, a defense of lack of *mens rea* would be appropriate if the facts support it.

21
22 **[SECTION 205. ENFORCEMENT.** If the [Department of Child Protection]

23 reasonably suspects that a person has violated this [article], the [Department] ~~shall~~ may
24 investigate and ~~may~~ ;

25 (1) for a violation of Section 203202(a), take action as provided by law of this state other
26 than this [act]; and

27 (2) for a violation of Section 204(a), bring a proceeding to enjoin the violation.]

28 **Legislative Note:** *This section is bracketed because other law of the state might already provide*
29 *authorization for the state's [Department of Child Protection] to investigate suspected violations*
30 *of this [article] and enforce it. If the [Department] already has the authority to take action to*
31 *enforce Section 203202(a), the state need not adopt subsection (1). If the [Department] already*
32 *has the authority to bring a injunction to enforce Section 204(a), the state need not adopt*
33 *subsection (2).*

34
35 *In the bracketed references to [Department of Child Protection], insert the state agency*
36 *responsible for investigation and enforcement of child welfare issues.*

37
38 **Reporter's Notes**

39
40 Regarding subdivision (1), should the reference to Section 203202(a) be more general to

1 Section ~~203202~~? Without doing so, it's not clear whether we intend the ~~that the~~ Department of
2 Child Protection ~~has to have~~ the authority to take action against a person who receives the
3 transfer of custody of a child. If that is our intent, that prohibition is in Section ~~203202~~(b).
4 Therefore, it would seem better not to refer to subsection (a) and simply to refer generally to
5 Section ~~203202~~?

6 7 Preliminary Comments

8
9 This section provides the Department of Child Protection with the authority to investigate
10 a situation if it has reasonable grounds to suspect that a person has violated this Article and to
11 take action or bring proceedings appropriate to the situation.
12

13 If the violation is of Section ~~203202~~(a), the Department is authorized to take action as is
14 provided in other law of the state. If the violation is of Section 204(a), the Department is
15 authorized to bring an action to enjoin the violation.
16

17 [[ARTICLE] 3

18 INFORMATION AND PREPARATION

19 *Legislative Note: Article 3 is bracketed because other law of the state might already require a*
20 *child-placing agency to provide information to and require preparation for prospective adoptive*
21 *parents comparable to that required in this article. If the state has law making comparable*
22 *requirements, it need not adopt this article. However, if the state does not have comparable*
23 *requirements, it should adopt this article.*
24

25 **SECTION 301. DEFINITIONS.** In this [article], “prospective adoptive parent” means
26 an individual who has been approved or permitted under law of this state other than this [act] to
27 adopt a child.

28 Preliminary Comments

29 A “prospective adoptive parent” in this article is an individual who has already been
30 approved to adopt a child. The approval process and requirements are governed by other state
31 law.
32

33 **SECTION 302. SCOPE.** This [article] applies to placement for adoption of a child
34 who:

35 (1) has been or is in foster or institutional care;

36 (2) previously has been adopted in ~~the United States~~ a state;

- 1 (3) has been or is being adopted under the law of a foreign country;
2 (4) has come or is coming to ~~the United States~~ a state to be adopted; or
3 (5) is not a citizen of the United States.

4 **Preliminary Comments**

5
6 Article 3 is designed to enhance the likelihood of a positive outcome in adoptions where
7 there is a heightened degree of risk for a disrupted or unsuccessful adoption. Its provisions apply
8 only to adoptions in which circumstances before the placement of the child with a prospective
9 adoptive parent indicate that there is ~~that~~ a heightened degree of risk for disruption of the
10 adoption. The list was developed from a review of placements identified by some states that
11 have already enacted provisions similar to those in this article (e.g. Utah {citation}), as well as
12 from the experiences of child-placement professionals.

13
14 Section 302 provides a list of those circumstances.

15 **SECTION 303. GENERAL ADOPTION INFORMATION.**

16
17 (a) Before a child-placing agency identifies a child for or places a child in an adoption
18 with a prospective adoptive parent, the agency shall provide or cause to be provided to the parent
19 the adoption information in subsection (b).

20 (b) The information under subsection (a) must address:

21 (1) possible physical, mental, emotional, and behavioral issues concerning
22 identity, loss, and trauma which a child might experience before or after adoption and probable
23 effects on a child of leaving familiar ties and surroundings;

24 (2) the effect access to resources, including health insurance, might have on
25 enabling an adoptive parent to meet the needs of a child;

26 (3) causes of disruption of an adoptive placement or dissolution of an adoption
27 and resources available to help avoid disruption or dissolution; and

28 (4) prohibitions under [Article] 2.

29 **Reporter's Notes**

1 In subsection (a), it's not clear why there are two events before which the child-placing
2 agency must provide information to the prospective adoptive parent – before an agency identifies
3 a child for adoption and before an agency places a child for adoption. Identification of a child
4 for adoption with a prospective adoptive parent will always occur before or, at the latest, at the
5 same time as the placement of the child with that parent. If provision of the information by the
6 latter date, i.e. placement, is sufficient, it would seem unnecessary to identify the earlier date
7 also.

8 9 **Preliminary Comments**

10
11 Section 303 is the first of four sections that require a person, usually the child-placing
12 agency involved in the placement of the child, to provide information or assistance to the
13 prospective adoptive parent. Each section requires the provision of a different kind of
14 information or assistance and, in some cases, at a different time in the progress of placement and
15 adoption.

16
17 Subsection (a) requires the provision of general adoption information to the prospective
18 adoptive parent. The information required is generic and not child-specific, i.e. it is not focused
19 on a particular child. The information is, however, related in a general way to the types of issues
20 that might be confronted in the adoption of a child with a heightened degree of risk for disruption
21 of the adoption. Its objective is to inform the prospective adoptive parent about various matters
22 that the parent might not have appreciated and that might affect the parent's decision to proceed
23 further along the adoption pathway.

24
25 Subsection (a) also specifies that the information must be provided to a prospective
26 adoptive parent before a child [is identified or] placed in an adoption with the parent. Since this
27 adoption information is generic, it may be provided in a pre-prepared format. Further, the child-
28 placing agency need not personally provide the information to the parent as long as the agency
29 causes the information to be provided to the parent.

30
31 Subsections (b)(1), (b)(2), and (b)(3) specify information about three general matters that
32 may arise in an adoption of a child with a heightened degree of risk for disruption of the
33 adoption.

34
35 Subsection (b)(4) requires the child-placing agency to inform the prospective adoptive
36 parent about the prohibition on transferring custody of the child contained in Article 2.

37 38 **SECTION 304. INFORMATION ABOUT CHILD.**

39 (a) Except as prohibited by law of this state other than this [act], before a child-placing
40 agency places a child in an adoption with a prospective adoptive parent, the agency shall provide
41 to the parent information specific to the child which is known or reasonably ascertainable by the
42 agency.

1 (b) The information under subsection (a) must address:

2 (1) the child’s family, cultural, racial, religious, ethnic, linguistic, and educational
3 background;

4 (2) the child’s physical, mental, emotional, and behavioral health;

5 (3) any circumstance which might adversely affect the child’s physical, mental,
6 emotional, or behavioral health;

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

8 (5) the medical history of the child’s family;

9 (6) the history of any adoptive or out-of-home placement of the child and the
10 reason the adoption or placement was terminated;

11 (7) the child’s United States immigration status;

12 (8) post-placement and post-adoption medical, therapeutic, and educational
13 resources available to the adoptive parent and child, including language-acquisition training, to
14 assist in responding effectively to physical, mental, emotional, and behavioral issues; and

15 (9) available records relevant to the information.

16 (c) If, before an adoption is finalized, additional information under subsection (b) that is
17 material to an informed decision to adopt the child becomes known or reasonably ascertainable
18 to the child-placing agency, the agency shall provide the information to the prospective adoptive
19 parent.

20 (d) A child-placing agency placing a child in an adoption shall make reasonable efforts to
21 ascertain information about the child which is material to the prospective adoptive parent’s
22 informed decision to adopt the child.

23 **Reporter’s Notes**
24

1 Should abuse and neglect be added to the list of items for disclosure in subsection (b)? It
2 could be in a separate subparagraph or as an addition to an existing subparagraph.

3
4 In subsection (c), should there be an ongoing duty to disclose any information discovered
5 after the adoption is finalized to the adoptive parents?

7 **Preliminary Comments**

8
9 Subsection (a) requires the provision of information to the prospective adoptive parent
10 that is child specific. It is information about the specific child that the child-placing agency is
11 proposing to place with the parent. Once again, the objective is to inform the parent about
12 various matters in the specific child’s history or background that might affect the parent’s
13 decision to proceed further in this particular adoption. Its objective is to avoid surprises to the
14 parent at a later date that might result in an unsuccessful adoption and perhaps in a desire to
15 transfer custody of the child in violation of Article 2.

16
17 ~~Subsection (a) also requires~~ The requirement that a child-placing agency provide
18 information to the prospective adoptive parent applies to information that is “known or
19 reasonably ascertainable by the agency.” Subsection (d) requires an agency to make reasonable
20 efforts to ascertain information material to the parent’s decision to adopt. These subsections
21 recognize that some information about a particular child might not be ascertainable even after
22 reasonable effort. This might be particularly true in an international adoption if, due to
23 limitations imposed by the country of origin or the foreign child-care institution with custody of
24 the child, the information is not provided to the agency. In some cases, it might be obvious to
25 the agency that, after using reasonable efforts, it is still unable to obtain certain information
26 about the child (e.g. the child’s medical history is totally absent), and this lack of information
27 should be pointed out to the parent. However, in other cases, even after using reasonable efforts,
28 the absence of information might not be obvious to the agency (e.g. the child has a particular
29 medical condition that is not apparent from any other information in the record), and it would not
30 have reason to make any further investigation about the issue.

31
32 Subsection (c) states that if, after the placement and before the finalization of the
33 adoption, additional information about the child that is material to a successful adoption becomes
34 known or reasonably ascertainable to the child-placing agency, it must provide that information
35 to the prospective adoptive parent.

36
37 The child-specific matters about which the child-placing agency must inform the
38 prospective adoptive parent are listed in subsection (b):

39 Subsection (b)(1) requires information on various aspects of the child’s background.

40 Subsection (b)(2) requires information on various aspects of the child’s health, and
41 subsection (3) on circumstances which might adversely affect those aspects of the child’s health.

42 Subsection (b)(4) requires information on the child’s medical history, and subsection
43 (b)(5) requires information on the medical history of the child’s family.

44 Subsection (b)(6) requires information regarding any prior adoptive or out-of-home
45 placement (e.g. foster care) and the reason the adoption or placement was terminated.

46

1 Subsection (b)(7) requires information about the child’s immigration status if the child is
2 not a United States citizen.

3
4 Subsection (b)(8) requires information about various post-placement and post-adoption
5 resources that are available to the parent to assist in responding to certain health issues of the
6 child.

7 Subsection (b)(9) requires the provision of available records regarding matters listed in
8 the prior subsections.

9
10 **SECTION 305. GUIDANCE AND INSTRUCTION.**

11 (a) In this section, “inter-country adoption” means a placement for adoption of a foreign-
12 born child who resides outside the United States and is eligible to immigrate to the United States
13 under United States immigration law. The term includes an adoption finalized in the child’s
14 country of residence at the time of the placement or in a state ~~of the United States~~.

15 (b) A child-placing agency placing a child for adoption shall provide or cause to be
16 provided to the prospective adoptive parent guidance and instruction specific to the child to help
17 prepare the parent to respond effectively to the needs of the child which are known or reasonably
18 ascertainable by the agency.

19 (c) The guidance and instruction under subsection (b) must address:

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

21 (A) previous adoption or out-of-home placement, or multiple placements;

22 (B) attachment disorder, trauma exposure, or a similar emotional issue;

23 (C) fetal-alcohol-spectrum disorder, drug exposure, malnutrition, or
24 similar adversity

25 (D) separation from siblings or significant caregivers; and

26 (E) any difference in ethnicity, race, or cultural identity between the child
27 and the prospective adoptive parent or another child of the parent;

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

1 and

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

3 (d) The guidance and instruction under subsection (b) must be provided:

4 (1) for adoption of a child residing in the United States, before the adoption is
5 finalized; or

6 (2) for an inter-country adoption, before the child enters the United States.

7 **Reporter’s Notes**

8

9 Subsection (b) requires the child-placing agency to provide guidance and instruction in
10 order to prepare the ~~prospective~~ adoptive parent to respond to needs of the child “which are
11 known or reasonably ascertainable by the agency.” There is identical language in subsection
12 304(a) regarding provision of child-specific information to the parent. To affirm that obligation,
13 subsection 304(d) specifically requires the agency to make reasonable efforts to ascertain the
14 information. Should we also provide in this section, perhaps as a separate subsection, that the
15 agency has a duty to make reasonable efforts to ascertain the needs of the child?

16

17 Should “neglect” be added to subsection (c)(1)(B)?

18

19 **Preliminary Comments**

20

21 Subsection (b) requires a child-placing agency to provide guidance and instruction to a
22 ~~prospective~~ adoptive parent to prepare the parent to respond effectively to the needs of the child.
23 As with information required to be provided by Section 303(a), the child-placing agency need
24 not personally provide the guidance and instruction to the parent as long as the agency causes it
25 to be provided to the parent.

26

27 Subsection (b) limits the child-placing agency’s obligation to provide the guidance and
28 instruction to needs of the child which known to or reasonably ascertainable by the agency.

29

30 Subsection (d)(1) requires the guidance and instruction be provided to the prospective
31 adoptive parent of a child residing in the United State before the adoption is finalized. Thus, the
32 guidance and instruction may be provided after the placement with the parent is completed as
33 long as it is provided before the adoption is finalized.

34

35 However, in subsection (d)(2), the guidance and instruction for a prospective adoptive
36 parent in an inter-country adoption must be provided before the child enters the United States.
37 This is unlike the timing of the guidance and instruction in the adoption of children residing in
38 the United States. This difference in treatment timing is because it is too late to wait until the
39 adoption is finalized to provide the guidance and instruction in an inter-country adoption. By
40 that date, the child will have left the child’s country of origin and the care and support received

1 there and travelled to and arrived in the United States. Waiting until that time does not promote
2 a decision that is beneficial to either the child or the parent. If the parent should ~~then, at that later~~
3 ~~date,~~ decide not to adopt ~~the child~~ because of the newly provided guidance and instruction, the
4 child will likely either be returned to the child's country of origin or placed in a child welfare
5 system alien to the child's prior experience. Providing the guidance and instruction at an earlier
6 date will allow the parent to make an earlier decision which, if it is not to adopt, will be much
7 less harmful to the child's well-being than a delayed decision. The timing for the provision of
8 the guidance and instruction in an inter-country adoption is, in most cases, the same as the timing
9 for the provision of the information required in Section 304.

10
11 Subsection (a) defines an inter-country adoption as a placement for adoption of a foreign-
12 born child who, at the time of the placement, resides outside of the United States. Since the child
13 will be immigrating to the United States, the child must be eligible to immigrate to the United
14 States. Adoptions of foreign-born children are ~~usually often~~ finalized in the child's country of
15 residence before the child immigrates to the United States. However, an adoption may also be
16 finalized in a state of the United States.

17
18 Subsection (c) sets out the matters which the guidance and instruction must address.
19 They are a subset of the matters about which the child-placing agency must provide information
20 under Sections 303(b) and 304(b):

21 Subsection (c)(1)(A) relates to subsection 304(b)(6).

22 Subsections (c)(1)(B) and (c)(1)(C) relate to subsections 303(b)(1), 304(b)(2), 304(b)(3),
23 304(b)(4), and 304(b)(8).

24 Subsection (c)(1)(D) relates to subsection 303(b)(1).

25 Subsection (c)(1)(E) relates to subsection 304(b)(1).

26 Subsection (c)(2) relates to subsection 304(b)(7).

27 Subsection (c)(3) is a general grouping of all other matters that the child-placing agency
28 considers important to the adoption.

29
30 **[SECTION 306. SUPPORT SERVICES.**

31 (a) After a child is placed with a prospective adoptive parent and after an adoption is
32 finalized, if the child or parent requests support services to help preserve the placement or
33 adoption, the child-placing agency placing the child or the [Department of Child Protection] shall
34 provide information about how to access services that may assist the child or parent to respond
35 effectively to adjustment, behavioral, and other challenges that may arise after the child is placed
36 or adopted.

37 (b) The information under subsection (a) includes:

38 (1) parenting-skills training and education, individual and family counseling,

1 respite care, and other parent skill-based programs; and
2 (2) services provided by a qualified clinician to prevent and treat mental health or
3 substance abuse issues.]

4 **Legislative Note:** *This section is bracketed because other law of the adopting state might*
5 *already provide for support services. An adopting state should consider its laws and, if the state:*

6
7 *(1) has no requirement for the provision of post-adoption support services, the state*
8 *should adopt this section;*

9
10 *(2) requires the provision of post-adoption support services, the state should insert a*
11 *restatement of those services or a reference to the other law of the state requiring provision of*
12 *those services; or*

13
14 *(3) has only a general statement on the provision of post-adoption support services and*
15 *does not identify those support services, the state should consider adding the specific services*
16 *listed in subsection (b).*

17
18 **Reporter's Notes**

19
20 In the first line of subsection (a), should the times be in the disjunctive instead of the
21 conjunctive, i.e. replace the “and” with an “or”? Using the conjunctive seems to say the request
22 must be at both times.

23
24 **Reporter's Comments**

25
26 This section requires the child-placing agency or the Department of Child Protection to
27 provide information on how to access support services to help preserve the placement or
28 adoption. It is designed to allow the state to take advantage of funds available to it under the
29 federal Family First Prevention Services Act. Participation in the services made available under
30 that act will fund, or assist in funding, the services specified in this section.

31
32 The information specified in subsection 306(b), if requested by the child or the parent,
33 must be provided during either or both the post-placement period before the adoption is finalized
34 and after adoption is finalized.

35
36 Subsection (b) states that the access information that must be provided includes:

37 Subsection (b)(1) specifies information on access to parenting-skills training and
38 education, individual and family counseling, respite care, and other parent skill-based programs.

39 Subsection (b)(2) specifies information on access to services from a qualified clinician to
40 prevent and treat mental health or substance abuse issues.

41
42 The access information on support services specified in subsection (b) overlaps to some
43 extent information or guidance and instruction required in Sections 303, 304, and 305.

1 [ARTICLE] 4

2 MISCELLANEOUS PROVISIONS

3 SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

4 applying and construing this uniform act, consideration must be given to the need to promote
5 uniformity of the law with respect to its subject matter among states that enact it.

6 Preliminary Comments

7
8 This provision encourages judicial construction that will maintain uniformity among the
9 various states adopting the act.

10
11 SECTION 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL

12 AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the federal
13 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.,
14 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
15 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
16 U.S.C. Section 7003(b).

17 Preliminary Comments

18
19 This section responds to the specific language of the Electronic Signatures in Global and
20 National Commerce Act and is designed to avoid preemption of state law under that federal
21 legislation.

22
23 SECTION 403. TRANSITIONAL PROVISIONS.

24 (a) [Article] 2 applies to:

25 (1) a transfer of custody on or after [the effective date of this [act]],

26 (2) advertising on or after the [effective date of this [act;]]; and

27 (3) a transfer of custody before [the effective date of this [act]] in which the
28 custody continues in a transferee after [the effective date of this [act]].

29 [(b) [Article] 3 applies to placement of a child for adoption more than 60 days after [the

1 effective date of this [act]].]

2 *Legislative Note: If the state adopts Article 3, it should include subsection (b).*

3 **Preliminary Comments**

4
5 Subsections (a)(1) and (a)(2) provide that Article 2 applies prospectively, i.e. to transfers
6 of custody and advertising that occur after the effective date of the act. However, if a transfer of
7 custody has occurred before the date of enactment that would be a violation of Article 2 and
8 continues after the effective date of the act, subsection (a)(3) provides that the Article also
9 applies to it.

10
11 Subsection (b) provides that Article 3 applies to placements that occur more than 60 days
12 after the effective date of the act. This period allows time for child-placing agencies to prepare
13 for and apply the provisions of Article 3.

14
15 **[SECTION 404. SEVERABILITY.** If any provision of this [act] or its application to
16 any person or circumstance is held invalid, the invalidity does not affect other provisions or
17 applications of this [act] which can be given effect without the invalid provision or application,
18 and to this end the provisions of this [act] are severable.]

19 *Legislative Note: Include this section only if this state lacks a general severability statute or a*
20 *decision by the highest court of this state stating a general rule of severability.*

21
22 **Preliminary Comments**

23
24 This is the standard severability provision for uniform laws.

25 **[SECTION 405. REPEALS; CONFORMING AMENDMENTS.**

26 (a)

27 (b)

28 (c)]

29
30 **Preliminary Comments**

31 This section lists laws that this act supervenes.

32
33 **SECTION 406. EFFECTIVE DATE.** This [act] takes effect

1

Preliminary Comments

2

This is the standard effective date provision for uniform laws.