

# Uniform Unregulated Child Custody Transfer Act\*

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# **Uniform Unregulated Child Custody Transfer Act**

## **[Article] 1**

### **General Provisions**

#### **Section 101. Title**

This [act] may be cited as the Uniform Unregulated Child Custody Transfer Act.

#### **Section 102. Definitions**

In this [act]:

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

(2) “Child-placing agency” means a person with authority under other law of this state to identify or place a child for adoption. The term does not include a parent of the child.

(3) “Custody” means the exercise of physical care and supervision of a child.

(4) “Intercountry adoption” means an adoption or placement for adoption of a child who resides in a foreign country at the time of adoption or placement. The term includes an adoption finalized in the child’s country of residence or in a state.

(5) “Parent” means an individual recognized as a parent under other law of this state.

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

(7) “Record” means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(8) “State” means a state of the United States, the District of Columbia, Puerto

Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

*Legislative Note: Insert the state's age of majority in the bracket in paragraph (1).*

### **Section 103. Limitation on Applicability**

This [act] does not apply to custody of an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. Section 1903(4)[, as amended], to the extent governed by the Indian Child Welfare Act, 25 U.S.C. Sections 1901 through 1963[, as amended].

*Legislative Note: It is the intent of this act to incorporate future amendments to the cited federal law. However, in a state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law, the phrase "as amended" should be omitted. The phrase also should be omitted in a state in which, in the absence of a legislative declaration, future amendments are incorporated into state law.*

## **[Article] 2**

### **Prohibition of Unregulated Custody Transfer**

#### **Section 201. Definitions**

In this [article]:

(1) "[Guardian]" means a person recognized as a [guardian] under other law of this state.

(2) "Intermediary" means a person that assists or facilitates a transfer of custody of a child, whether or not for compensation.

*Legislative Note: If the state uses a term other than "guardian" to designate a person other than a parent that has the legal authority and duty to care for a child, insert that term in paragraph (1) and when "guardian" or "guardianship" is used in Sections 202 and 203.*

#### **Section 202. Applicability**

This [article] does not apply to a transfer of custody of a child by a parent or [guardian] of the child to:

(1) a parent of the child;

(2) a stepparent of the child;

(3) an adult individual:

(A) who is related to the child by blood, marriage, [or ]adoption[, or other relationship recognized by other law of this state]; or

(B) who, at the time of the transfer, had a close relationship for a substantial period with the child or the parent or [guardian] of the child, and whom the parent or [guardian] reasonably believed, at the time of the transfer, to be a fit custodian of the child;[ or]

(4) an Indian custodian of the child as recognized by the Indian Child Welfare Act, 25 U.S.C. Section 1903[, as amended][; or

(5) a member of the child's customary family unit recognized by the child's indigenous group under law of this state].

### **Section 203. Prohibited Custody Transfer**

(a) Except as permitted in subsection (b), a parent or [guardian] of a child or an individual with whom a child has been placed for adoption may not transfer custody of the child to another person with the intent, at the time of the transfer, to abandon the parent's, [guardian's], or individual's rights and responsibilities concerning the child.

(b) A parent or [guardian] of a child or an individual with whom a child has been placed for adoption may transfer custody of the child under subsection (a) only 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) cite to the state's safe haven law][; or

(6) . . . ].

(c) A person may not receive custody of a child, or act as an intermediary in a transfer of custody of a child, if the person knows or reasonably should know the transfer violates subsection (a). This subsection does not apply if the person as soon as practicable notifies the [Department of Child Protection] or [law enforcement] of the transfer or takes appropriate action to establish custody under subsection (b).

(d) Violation of this section is a [insert class of offense].

(e) The fact that a parent or [guardian] that transfers custody of a child subsequently does not regain custody of the child does not itself establish that the parent or [guardian] violated subsection (a).

**Legislative Note:** *A state that has a safe haven law should insert a reference to that law in subsection (b)(5).*

*The state should insert in subsection (b)(6) a reference to each process the state permits for transfer of custody of a child that is not included in the preceding paragraphs.*

*In subsection (d), the state should insert the degree or level of the offense the state chooses.*

#### **Section 204. Authority and Responsibility of the [Department of Child Protection]**

(a) If the [Department of Child Protection] has [probable cause] [reasonable basis] to believe that a person has transferred or will transfer custody of a child in violation of Section 203(a), the [department] may conduct a home visit as provided by other law of the state and take appropriate action to protect the welfare of the child.

(b) If the [Department of Child Protection] conducts a home visit for a child adopted or placed through an intercountry adoption, the [Department] shall:

(1) prepare a report on the welfare and plan for permanent placement of the child;

and

(2) provide to the United States Department of State a copy of the report under paragraph (1).

(c) This [act] does not prevent the [Department of Child Protection] from taking appropriate action under law of this state other than this [act].

*Legislative Note: The state should insert the title of the appropriate state agency responsible for child protective services, in this section and Sections 306 and 308.*

### **Section 205. Prohibited Soliciting or Advertising**

(a) A person may not solicit or advertise to:

(1) find a person to which to make a transfer of custody in violation of Section

203(a);

(2) locate a child for a transfer of custody in violation of Section 203(c); or

(3) act as an intermediary in a transfer of custody in violation of Section 203(c).

(b) Violation of this section is a [insert class of offense].

*Legislative Note: In subsection (b), the state should insert the degree or level of offense the state chooses.*

### **[Section 206. Enforcement**

The [law enforcement authority] may investigate and take legal action as provided by law of this state.]

*Legislative Note: A state should omit this section if other law of the state already authorizes a state officer to take action to enforce this act.*

*A state should insert the appropriate law enforcement authority that will investigate and bring a proceeding under this section.*

## **[[Article] 3**

### **Information and Guidance**

*Legislative Note: Article 3 is optional because other law of the state already might require a child-placing agency to provide information to and require preparation for a prospective adoptive parent comparable to that required in this article. If the state has comparable requirements, it need not enact this article. If the state does not have comparable requirements, it should enact this article.*

### **Section 301. Definition**

In this [article], “prospective adoptive parent” means an individual who has been approved or permitted to adopt a child under other law of this state.

### **Section 302. Scope**

This [article] applies to placement for adoption of a child who:

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

### **Section 303. General Adoption Information**

Within a reasonable time before a child-placing agency places a child for adoption with a prospective adoptive parent, the agency shall provide or cause to be provided to the prospective adoptive parent general adoption information. The information must address:

- (1) possible physical, mental, emotional, and behavioral issues concerning:
  - (A) identity, loss, and trauma that a child might experience before, during, or after adoption; and
  - (B) a child leaving familiar ties and surroundings;
- (2) the effect that access to resources, including health insurance, might have on the ability of an adoptive parent to meet the needs of a child;

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

(4) prohibitions under Sections 203 and 205.

#### **Section 304. Information About Child**

(a) Except as prohibited by other law of this state, within a reasonable time before a child-placing agency places a child for adoption with a prospective adoptive parent, the agency shall provide or cause to be provided to the prospective adoptive parent information specific to the child that is known or reasonably obtainable by the agency and that is material to the prospective adoptive parent's informed decision to adopt the child. The information must include:

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

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

(3) circumstances that may adversely affect the child's physical, mental, emotional, or behavioral health;

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

(5) the medical history of the child's genetic parents and siblings;

(6) the history of an adoptive or out-of-home placement of the child and the reason the adoption or placement ended;

(7) the child's United States immigration status;

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

(9) available records relevant to the information in paragraphs (1) through (8).

(b) If, before an adoption is finalized, additional information under subsection (a) that is material to a prospective adoptive parent's informed decision to adopt the child becomes known or reasonably obtainable by the child-placing agency, the agency shall provide the information to the prospective adoptive parent.

(c) If, after an adoption is finalized, additional information under subsection (a) becomes known to the child-placing agency, the agency shall make a reasonable effort to provide the information to the adoptive parent.

### **Section 305. Guidance and Instruction**

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

(b) The guidance and instruction under subsection (a) must address, if applicable:

(1) the potential effect on the child of:

(A) previous adoption or out-of-home placement;

(B) multiple adoptions or out-of-home placements;

(C) trauma, insecure attachment, fetal alcohol exposure, or malnutrition;

(D) neglect, abuse, drug exposure, or similar adversity;

(E) separation from a sibling or significant caregiver; and

(F) any difference in ethnicity, race, or cultural identity between the child and the prospective adoptive parent or other child of the parent;

(2) information available from the federal government on the process for the child

to acquire United States citizenship; and

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

(c) The guidance and instruction under subsection (a) must be provided:

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

(2) for an intercountry adoption, in accordance with federal law.

### **Section 306. Information About Financial Assistance and Support Services**

(a) On request by a child who was placed for adoption or the child's adoptive parent, the child-placing agency placing the child or the [Department of Child Protection] shall provide information about how to obtain financial assistance or support services:

(1) to assist the child or parent to respond effectively to adjustment, behavioral, and other challenges; or

(2) to help preserve the placement or adoption.

### **Section 307. Child-Placing Agency Compliance**

(a) The [law enforcement authority] may investigate an allegation that a child-placing agency has failed to comply with this [article] and commence an action for injunctive or other relief or initiate administrative proceedings against the child-placing agency to enforce this [article].

(b) The [state licensing authority] may initiate proceedings to determine whether a child-placing agency has failed to comply with this [article]. If the [authority] finds that the child-placing agency has failed to comply, the [authority] may suspend or revoke the agency's license or take other action permitted by law of the state.

***Legislative Note:** In subsection (a), a state should insert the appropriate law enforcement authority that will investigate and bring a proceeding under this subsection.*

*In subsection (b), a state should insert the appropriate state licensing authority that will issue or suspend a license under this section.*

### **Section 308. Rulemaking Authority**

The [Department of Child Protection] may adopt rules under [cite to state administrative procedure act] to implement Sections 303, 304, 305, and 306.]

## **[Article] 4**

### **Miscellaneous Provisions**

#### **Section 401. Uniformity of Application and Construction**

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

#### **Section 402. Relation to Electronic Signatures in Global and National Commerce Act**

This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

***Legislative Note:** It is the intent of this act to incorporate future amendments to the cited federal law. A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase “, as amended”. A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.*

#### **Section 403. Transitional Provisions**

[(a)] [Article] 2 applies to:

- (1) a transfer of custody on or after [the effective date of this [act]]; and
- (2) soliciting or advertising on or after [the effective date of this [act]].

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

effective date of this [act]].]

*Legislative Note: If the state enacts Article 3, Section 403(b) should also enacted.*

#### **[Section 404. Severability**

If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

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

#### **[Section 405. Repeals; Conforming Amendments**

(a) . . .

(b) . . . ].

*Legislative Note: A state should examine its statutes to determine whether conforming revisions are required by provisions of this act relating to unregulated child custody transfers and provision of information and guidance to prospective adoptive parents. See Articles 2 and 3.*

#### **Section 406. Effective Date**

This [act] takes effect . . .