

From: Barbara Atwood
Date: March 22, 2021
Subject: comments on draft

Section 103 -- Our language is slightly different from the comparable provision in the Uniform Nonparent Custody and Visitation Act. There, it says the act does not apply to a proceeding "pertaining to custody of or visitation with an Indian child as defined in the Indian Child Welfare Act of 1978, 25 U.S.C. Section 1903(4)[, as amended], to the extent the proceeding **is governed** by the Indian Child Welfare Act of 1978, 25 U.S.C. Sections 1901 through 1963[, as amended]" I recommend that we use that language, instead of "to the extent application would conflict with..." It's better policy, in my view, to just have a hands-off approach if ICWA governs, rather than require a court to explore whether there is a conflict.

Section 201: I thought we'd agreed to simplify a little, by including a definition along the lines of "guardian" means a guardian under law of this state other than this [act] and an individual with whom a child is placed for adoption. That way, the rest of Article 2 can refer to "parent or guardian" ---without all the verbiage.

Section 202: I believe we need to define "related to" -- In the commentary Art has referred to relationship by blood or marriage. If that's what we mean, then should we say it in the black letter?

Also, maybe the category of individual with substantial relationship can be phrased more precisely. Right now it says "is not related to the child and has a close relationship for a substantial period with the child or the parent or guardian of the child;" I suggest we delete "is not related to the child" -- and I hope we can come up with something other than "close relationship for substantial period..." That seems to invite litigation about what we mean by "close" and what we mean by "substantial." I think what we are really trying to prohibit are transfers to unknown people and to permit transfers to people the parent or guardian knows well enough to be confident about child's safety. Can we work on this?

Section 203(d): I still find this subsection ambiguous. I understand the policy, but the prohibition under 203(a) includes intent at the time of the transfer as well as a later intent to allow a transfer to become permanent. How does 203(d) affect the question of a later intent to allow a transfer to become permanent?

Section 204: Can we reword to avoid the passive voice?

If the [department of child protection] has probable cause to believe that a parent or guardian has transferred or will transfer custody of a child in violation of Section 203(a), the [department] may conduct a home visit to assess the welfare of the child and to facilitate compliance with Section 203(a).