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# UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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October 12, 2018

## **UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT**

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# **UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT**

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1                   **UNREGULATED TRANSFERS OF ADOPTED CHILDEN ACT**

2                   **SECTION 1. SHORT TITLE.** This [act] may be cited as the Unregulated Transfer of  
3 Children Act.

4                   **SECTION 2. DEFINITIONS.** In this act:

5                   (a) “Child” means an individual who has not achieved 18 years of age.

6                   (b) “Child placing” means:

7                         (1) receiving, accepting, or providing custody or care for a child, temporarily or  
8 permanently, for the purpose of finding an individual to adopt the child; or

9                         (2) placing a child, temporarily or permanently, in a home for adoption or  
10 substitute care.

11                  (c) “Child-placing agency” means a person that engages in child placing.

12                  (d) “Child with high needs” means a child:

13                         (1) with an attachment or trauma-related disorder;

14                         (2) who suffered from prenatal exposure to alcohol or drugs;

15                         (3) who is the subject of an intercountry adoption;

16                         (4) who was previously adopted; or

17                         (5) who is in foster care.

18                  (e) “Person” means an individual, corporation, business trust, statutory trust, estate, trust,  
19 partnership, limited liability company, association, joint venture, public corporation, government  
20 or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

21                  (f) “Prospective adoptive parent” means an individual who has made or is in the process  
22 of making an application to a child-placing agency to adopt a child.

23                  (g) “Record” means information that is inscribed on a tangible medium or that is stored in

an electronic or other medium and is retrievable in a perceivable form.

### Comments/Questions

All of the existing statutes and current literature on this topic only deal with child adoptees, i.e. a minor. They do not deal with adult adoptees. While one may make a general assumption that adults are able to care for themselves and protect their own interests, that may not always be the case. For example, what about a disabled adult who dependent on his/her adoptive parents and has an attachment or trauma-related disorder.

### SECTION 3. UNREGULATED CUSTODY TRANSFER OF CHILD. An

unregulated custody transfer is the placement for a period greater than six months of a child with high needs

(1) with an individual who is not:

(A) the child's parent, step-parent, grandparent, adult sibling, adult uncle or aunt, or legal guardian;

(B) a friend of the family who is an adult and with whom the child is familiar; or

(C) a member of the child's federally recognized Indian tribe;

(2) with the intent of severing the child's existing parent-child or guardian-child relationship; and

(3) without taking:

(A) reasonable steps to ensure the safety of the child and permanency of the placement; and

(B) the steps necessary in this state to transfer the legal rights and responsibilities of parenthood or guardianship to the individual taking custody of the child.

### Comments/Questions

The introductory clause limits the definition of an unregulated custody transfer to a placement that is greater than six months. While that interim period may be valuable in dealing with temporary transfers of custody for purposes such as accommodating a child's attendance at a distant school, it doesn't seem necessary under the above definition. To the extent the custody

transfer is to a relative or close friend, it is excluded under subsection (1) and to the extent that it's not intended to sever the parent-child relationship, it is excluded under subsection (2). Allowing the extra six months allow repetitive short-term transfers, or at least put off the legal authority to deal with the situation. Should the six-month exception be removed?

In subsection (1), the custody transferee is identified as an "individual." While that term seems to fit the usual transferee, it might not be correct in all cases. For example, it might be a "home" owned by a corporate entity and thus not included in the definition of an unregulated custody transfer. Also, the term "individual" may not fit subsection (1)(C) – "federally recognized Indian tribe." Would it be better to use the term "person" even though, as defined, it might be over inclusive?

#### **SECTION 4. PREPLACEMENT DISCLOSURE AND TRAINING BEFORE**

**ADOPTION OF CHILD WITH HIGH NEEDS.** Before referring a child with high needs for adoption or entering into a contract to provide adoption services to a prospective adoptive parent of a child with high needs, the child-placing agency shall ensure that the prospective adoptive parent receives the information under Section 5 and training under Section 6.

**SECTION 5. INFORMATION TO PROSPECTIVE ADOPTIVE PARENT.** To the extent available, the child-placing agency shall provide a prospective adoptive parent the following information:

(1) a social history of the child with high needs to be adopted, including:

(A) a history of the child's cultural, racial, religious, ethnic, linguistic, and educational background; and

(B) any condition in the child's country of origin, if applicable, to which the child might have been exposed and that might have an impact on the child's physical or mental health;

(2) a record of the child's:

(A) physical health, mental health, behavioral issues, or exposure to trauma, including whether the child-placing agency knows or suspects that the child has been exposed to alcohol or drugs in utero; and

(B) history of institutionalization or previous adoptive or foster placements and, if applicable, the reason each previous placement was terminated; and

(3) other information the child-placing agency considers important.

**SECTION 6. TRAINING FOR PROSPECTIVE ADOPTIVE PARENT.** The child-placing agency shall provide a prospective adoptive parent with at least [X] hours of training on the following matters:

(1) the impact leaving familiar ties and surroundings might have on a child with high needs, and the grief, loss, and identity issues that a such a child might experience in adoption;

(2) the potential impact of an institutional setting on a child with high needs;

(3) attachment disorders, trauma-related disorders, fetal alcohol spectrum disorders, and other emotional problems that a child with high needs might suffer, particularly when such a child has been institutionalized, traumatized, or cared for by multiple caregivers;

(4) the general characteristics of a successful adoption placement, including information on the financial resources, time, and insurance coverage necessary for handling the adjustment of the adoptive family and the child following placement;

(5) the medical, therapeutic, and educational needs a child with high needs might require, including language acquisition training;

(6) how to access post-placement and post-adoption services that might assist the adoptive family to respond effectively to adjustment, behavioral, and other difficulties that might arise after a child with high needs is placed or adopted;

(7) issues that might lead to the disruption of an adoptive placement or the dissolution of an adoption, including how an adoptive parent may access resources to avoid disruption or dissolution;

- (8) the long-term implications for a family that becomes multicultural through adoption;
- (9) for a prospective adoptive parent who seeks to adopt two or more unrelated children, the differing needs of the children based on their respective ages, backgrounds, length of time outside of family care, and the time management requirements and other challenges that might be presented in a multi-child adoption;
- (10) the prohibition against an unregulated custody transfer of a child; and
- (11) other matters the child-placing agency considers important.

#### **SECTION 7. CUSTODY TRANSFER OF A CHILD WITH HIGH NEEDS. A**

permanent transfer of the custody of a child with high needs may be performed only by means of

- (1) a formal adoption procedure through a child-placing agency or the [Department], or
- (2) a judicial proceeding.

#### **Comments/Questions**

Are there other means for custody transfer of a child with high needs that should be included? Are the identified means sufficiently described?

#### **SECTION 8. INVESTIGATION BY THE [DEPARTMENT]; PROTECTIVE CUSTODY OF A CHILD; TERMINATION OF PARENTAL RIGHTS.**

(a) If the [Department] receives a report providing reasonable cause to suspect an unregulated custody transfer of a child, the [Department] shall make a thorough investigation. Before commencement of the investigation, the [Department] shall provide notice to the child's adoptive parents and the individual who has custody of the child. [Department] workers have authority to enter public or private premises, using appropriate legal processes, to investigate a report of an unregulated custody transfer of a child.

(b) In accordance with other law of this state, a [Department] worker may take a child into protective custody and deliver the child to a law enforcement officer or place the child in an



emergency shelter facility approved by the juvenile court.

(c) On determination that the adoptive parents have made an unregulated custody transfer of a child, the [Department] may initiate judicial proceedings in accordance with other law of this state to terminate the parental rights of the adoptive parents.

#### **Comments/Questions**

Should subsection (b) make provisions for judicial review of the protective custody, or does the reference to “other law of this state” cover it? Should the judicial review have any special parameters that are different than “other law of this state” such as time, process, etc.? should there be notice provisions to the adoptive parents and to the custody transferees?

Similar to subsection (b), should subsection (c) contain other provisions or does the reference to “other law of this state” cover it?

#### **SECTION 9. DUTY TO REPORT UNREGULATED CUSTODY TRANSFER.**

Except as provided in Section 10, if an individual has reason to believe that the custody of a child has been transferred in violation of this act, that individual immediately shall report the alleged transfer to the [Department], which shall immediately investigate the alleged transfer.

#### **SECTION 10. CLERGY EXEMPTION TO DUTY TO REPORT.**

(a) Except as provided in subsection (b), the notification requirement in Section 9 does not apply to a member of the clergy, with regard to any confession made to the member of the clergy while functioning in the ministerial capacity of the member of the clergy and without the consent of the individual making the confession, if:

(1) the perpetrator made the confession directly to the member of the clergy; and

(2) the member of the clergy is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession.

(b) If a member of the clergy receives information about an unregulated custody transfer of a child from any source other than confession of the perpetrator, the member of the clergy is

required to report that information even though the member of the clergy may have also received information about the unregulated custody transfer from the confession of the perpetrator.

### **Comments/Questions**

Sections 9 and 10 were adapted from a Utah statute regarding disclosures for abuse or neglect. The issue of an unregulated custody transfer is somewhat different. Should there be further changes in these sections?

Should a lawyer-client privilege be specifically recognized? Should a doctor-patient or nurse-patient privilege be specifically recognized; they are specifically not recognized in the Utah statute for abuse and neglect. If they are not specifically recognized, should the above clerical privilege be specifically recognized?

## **SECTION 11. ADVERTISING RELATED TO UNREGULATED CUSTODY TRANSFER.**

(a) Except as provided in subsection (b), a person may not:

(1) Advertise for the purpose of adopting or otherwise taking into permanent physical custody a child of high needs.

(2) Advertise that the individual or person will find an adoptive home or any other permanent physical placement for a child with high needs or arrange for or assist in the adoption, adoptive placement, or any other permanent physical placement of a child with high needs.

(3) Advertise that the individual or entity will place a child with high needs for adoption or in any other permanent physical placement.

(b) This section does not apply to:

(1) The [Department] or a child welfare agency licensed under the law of this state to place children for adoption in licensed foster homes or group homes or in the homes of guardians.

(2) A foster care and adoption resource center or postadoption resource center funded by this state.

(c) This section does not prohibit an attorney licensed to practice in this state from advertising his or her availability to provide services relating to the adoption of children.

(d) Any person who violates this section is guilty of a [class B misdemeanor].

#### **Comments/Questions**

This Section is adapted from a similar Wisconsin provision. In subsection (b)(1) are there other governmental entities that should be included? Are there non-governmental entities other than a child welfare agency?

Should subsection (b)(2) be combined with subsection (b)(1) and more generic descriptions be used? Is the reference to “funded by the state” important and are these entities similarly funded in other states?

The reference to a class B misdemeanor in subsection (d) is a placeholder. Should the criminal classification be different? Should it be left undefined and left to the state to insert?

#### **SECTION 12. PROHIBITION OF UNREGULATED CUSTODY TRANSFER.**

(a) An unregulated custody transfer of a child is void.

(b) An individual or entity that knowingly engages in an unregulated custody transfer is guilty of a [class B misdemeanor].

#### **Comments/Questions**

The reference to a class B misdemeanor in subsection (b) is a placeholder. Should the criminal classification be different? Should it be left undefined and left to the state to insert?

#### **SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

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

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

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

3  
4 **SECTION 15. EFFECTIVE DATE.** This [act] takes effect . . . .

5 **Comments/Questions**

6  
7 Is it necessary or appropriate to include an applicability clause, a repeals clause, or a  
8 savings clause?