

## MEMORANDUM

From: David Biklen, Chair, and Art Gaudio, Reporter  
To: Commissioners, Uniform Law Commission  
Re: Issues – Unregulated Transfers of Adopted Children Act (“UTACA”)  
Date: August 17, 2020

In the process of drafting this uniform act, the drafting committee has encountered and debated many issues. The draft submitted to the Commission reflects the committee’s resolution of many of those issues. This memorandum will identify and briefly describe some of them. Other issues are currently being considered by the committee and they are reflected in the Reporter’s Notes contained in the submitted draft of the act.

*Section 201(1) [p. 6]* – Several observers expressed concern about the clarity and certainty of a parent’s right to receive a transfer of custody of the child. An earlier version of Section 202(a)(1) had permitted a parent to receive that transfer but that permission was by inclusion of the parent in a list that otherwise enumerated third parties. It was also subject to the cautionary provisions in that section applicable to transfers to third parties. Since the objective of this act is not to impair the ability a parent or guardian to receive custody of a child, but rather to prohibit a transfer of custody to third parties who pose a danger to the child, it was decided to remove transfers to a parent from Section 202(a)(1) and specifically exclude them from the scope of the act in Section 201(1).

*Section 202(a)(1) & (2) [p. 7]* – The committee considered whether to exclude a transfer of custody of a child to a relative or close family friend only if the transfer were intended to be a temporary transfer. This presented several issues, most particularly the difficulty of determining a transferor’s intent regarding the temporary nature of the transfer. There was also a desire for the exclusion of transfers to family members to match, in a general way, those listed in Article VIII, subsection (a) of the Interstate Compact on the Placement of Children, which are not limited to temporary ones. Thus, the committee decided not to limit custody transfers to those of a temporary nature.

*Section 202(b)(4) [p. 7]* – The committee was aware that there are a number of other appropriate situations in which a child’s custody might be transferred to another person. For example, a parent might need to transfer custody to another person in preparation for deployment in the armed services or as part of enrollment of the child in a boarding school. The committee considered various ways to exclude these transfers of custody from the operation of the act. It considered whether it should specifically list the excluded situations in the act. However, doing so might not include some transfers otherwise authorized under state law or include some not otherwise authorized. Ultimately, it decided to authorize those other transfers of custody as may be otherwise authorized by law of the state and to limit them for a period to be determined by the state legislature.

*Section 203(c) [p. 9]* – The committee considered whether to impose a penalty on a parent who violated Section 203 and, if so, what the nature of that penalty should be. Criminal treatment of an unregulated custody transfer under currently enacted state laws varies from misdemeanor to felony. The committee recognized that parents sometimes engaged in an unregulated custody transfer because of a genuine inability to deal with the child and a fear of reporting their situation to the [Department of Child Protection]. Nevertheless, it believed some penalty should be imposed for violating the law. Since an unregulated transfer of custody of a child places the child in danger, it decided to treat the violation in the same way as other acts that endanger the child.

*Section 204(b) [p. 11]* – The committee also considered whether to impose a penalty on a person who advertises for the purpose of making, receiving, or facilitating a prohibited child custody transfer. The committee decided to bracket this subsection, thereby allowing a state legislature to determine whether to impose a criminal penalty. As stated in the Reporter’s Notes for this subsection, although the act provides, in brackets, that a violation is a misdemeanor, the committee has not decided whether it wishes to be more specific as to the degree or nature of the misdemeanor.

S. 1446 is a U.S. Senate bill proposing the Safe Home Act of 2019. This bill, if enacted, will require the Secretary of Health and Human Services to issue guidance and technical assistance to the states regarding unregulated custody transfers. The guidance must include “model state laws with respect to unregulated custody transfers.” This uniform act would appear to fit well as such a model law but may need revision, particularly in Section 202, to conform with some of the requirements of the bill.