

UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

Errata for Draft Dated August 11, 2020 (Informal Session Draft)

- 1 **SECTION 201. SCOPE.** This [article] does not apply to a transfer of custody of a child
2 to:
- 3 (1) a parent of the child[or an individual who, at the time of the transfer, is in the status
4 of *in loco parentis* with the child]; or
- 5 (2) a person for the purposes of:
- 6 ~~(1)~~(A) adoption or guardianship;
- 7 ~~(2)~~(B) judicial transfer of custody; or
- 8 ~~(3)~~(C) placement by or through a child-placing agency.

Reporter's Notes

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11 Should we define "*in loco parentis*" in order to distinguish it from situations that might
12 arise under Section 202(a)(4)? E.g. Section 202(a)(4) would allow a transfer of a child's custody
13 to a boarding school which, in some definitions, is then *in loco parentis* with the child. A
14 definition of *in loco parentis* would prevent the two provisions from overlapping or perhaps
15 conflicting in some cases. A definition such as that under Arizona law might resolve the
16 issue: "'In loco parentis' means a person who has been treated as a parent by a child and who has
17 formed a meaningful parental relationship with a child for a substantial period of time." ARS
18 25-401(1).

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20 A Department of Child Protection may transfer its custody of a child to a foster care
21 provider. Should placement of a child by the Department of Child Protection be added to the list
22 of excluded transfers in ~~subsection (b)~~ subdivision (2), perhaps in ~~subsection (b)(3)~~ subdivision
23 (2)(c)?

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25 A few observers objected to provisions in this act that expand the right of a state child
26 protective agency to intrude into family homes. They claim that too often the child protective
27 system removal of a child from a home is harmful, not helpful, to the child. They also point to
28 research that indicates that families of color are disproportionately impacted by removal of a
29 child from the family home.

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31 It is beyond the scope of this drafting committee to review the child welfare system.
32 However, to address some of the concerns expressed, the draft expands the group of people to
33 whom a parent may transfer custody of a child without child welfare or court approval. Thus,
34 Section 202(a)(2) allows a parent to transfer custody of a child to a person "whom the parent

- 1 reasonably believes to be a fit custodian and is: . . . (2) an adult individual with whom the parent
- 2 has a pre-existing personal relationship before the transfer of custody;”