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## Unregulated Custody Transfers of Adopted Children

An unregulated custody transfer (UCT) of a child occurs when parents transfer the physical custody of their child to a person who is not the child's parent, stepparent, grandparent, or other adult relative; an adult friend of the family with whom the child is familiar; or a member of the child's tribe with the intent of permanently avoiding responsibility for the child's care and without taking reasonable steps to ensure the safety of the child or the permanency of the placement.<sup>1</sup>

UCT, also referred to as rehoming, is different from adoption in that, by definition, it happens informally without any formal supervision by child welfare authorities or courts. It is a practice in which parents seek new homes for their children and place them without the safeguards and oversight of the courts, the child welfare system, or another appropriate entity that has the capacity and authority to assess and protect the child's best interests.

<sup>1</sup> For examples of statutory definitions of UCT, see Arkansas § 5-27-211, Texas Penal Code § 25.081, and Utah § 78A-6-105.

While any child may be subject to UCT, children adopted through foster care in the United States or through intercountry adoption may be most at risk. A recent study found the challenges associated with these adoptions, including the child's complex physical and behavioral health needs and the difficulty in finding and paying for needed health services, may lead families to seek out unregulated transfers.<sup>2</sup>

These unregulated transfers of custody are often accomplished by using a document called a power of attorney to delegate authority for the care of the child (such as the right to consent to medical treatment for the child and to enroll the child in school) to the new caregiver. A power of attorney, however, is intended to allow parents to delegate such authority to another person when the parents are unable to care for the child for a specific period of time (due to, for example, illness, incarceration, or military deployment). The document is intended to be a temporary transfer of parental authority, and it does not terminate the legal relationship between the parents and the child.

Recent stories in the media tell of UCT situations involving adopted children who were placed in homes in which they were severely abused, neglected, or subjected to multiple subsequent moves. Even absent abuse, UCT places children at risk of harm because of any of the following:

- Most adopted children are already vulnerable and have experienced trauma (e.g., separation and loss), and the disruption and additional placement in another home creates additional trauma and instability.
- Children may be placed with families who may not have completed required child welfare or criminal background checks or clearances.
- Social services agencies and courts are unaware of the placement and thus do not conduct assessments on the child's safety and well-being in the new home.

<sup>2</sup> Brown, K., Morrison, E., Hartjes, E., Nguyen, N., Sweet, A. (2015). *Steps have been taken to address unregulated custody transfers of adopted children*. Washington, DC: Government Accountability Office. Retrieved from <http://www.gao.gov/products/GAO-15-733>.

- Lack of appropriate placement oversight increases the likelihood children may experience neglect of their medical, development, emotional, and/or educational needs; physical, sexual, or emotional abuse; placement in an unsafe environment; exposure to unsafe adults or other children/youth in the home; multiple disruptions; or an isolated lifestyle that could put them at risk for future abuse or exploitation.
- The new caregivers often have no legal responsibility for a child placed in their home through UCT, and the child is at risk for additional unregulated moves.<sup>3</sup>
- Children adopted through intercountry adoption may be at risk of not acquiring U.S. citizenship if the UCT happens before the adoptive parents complete all necessary steps to finalize the adoption.
- The new caregivers also may not have complete records, including birth, medical, and immigration records.

## State Laws That Curtail Unregulated Custody Transfers

For this publication, statutes regarding efforts to curtail UCT were collected from across all states, the District of Columbia, and the U.S. territories, and an analysis of the information informs the discussion that follows. The results show that in approximately 13 states, an unregulated custody transfer of a child is considered a criminal act.<sup>4</sup> Other approaches to curbing UCT include placing limits on delegating parental authority through the use of power of attorney documents and restricting the use of advertising to find placements for a child.

<sup>3</sup> Capacity Building Center for States. (2017). *Unregulated custody transfer/re-homing of adopted children: Tip sheet for child protection & child welfare professionals*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.

<sup>4</sup> The word "approximately" is used to stress the fact that states frequently amend their laws. This information is current only through October 2017. The states that have made UCT a criminal violation include Arkansas, Florida, Iowa, Louisiana, Maine, Michigan, Missouri, New Hampshire, North Carolina, Texas, Utah, Washington, and Wisconsin.

## Limiting the Use of Power of Attorney to Transfer Custody

Generally speaking, parents may delegate some parental powers, such as the authority to make education and health decisions on behalf of the child, to another person when they are unavailable to care for their child. This may be due to the parents' absence, illness, or incapacity or due to the child's absence (as in cases when the child is engaged in school, sports, or social activities away from home). A written document, such as a power of attorney, is used to make that delegation of parental powers. In UCT, parents may use a power of attorney with the intention that all parental authority is permanently transferred to the new caregiver, thereby absolving the parent of all responsibility for the child.

The statutes in 28 states, the District of Columbia, Guam, and the Virgin Islands describe the specific circumstances under which parents legally may use a power of attorney to delegate parental authority over their child to another person.<sup>5</sup> These laws stress that such delegations of parental authority are intended to be temporary, with 19 states and the Virgin Islands designating specific time limits.<sup>6</sup> The laws also describe the specific types of parental powers that may be delegated, including the right to enroll the child in school and consent to medical care and activities, and those that cannot be delegated, such as the right to consent to the marriage or adoption of the child. Many states also provide the circumstances under which a delegation of powers may be made, including any of the following:

- The parents' inability to provide proper care for the child due to the illness, incapacity, incarceration, military service, employment, or other voluntary or involuntary absence

<sup>5</sup> Alaska, Arizona, Arkansas, Georgia, Hawaii, Idaho, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, West Virginia, and Wisconsin.

<sup>6</sup> Delegations of parental powers are limited to 1 year in Alaska, Hawaii, Indiana, Minnesota, Mississippi, Oklahoma, West Virginia, and Wisconsin; 6 months in Arizona, Idaho, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Oregon, and the Virgin Islands; 60 days in Massachusetts; and 180 days in Michigan.

- The child's absence due to school, sports, or social activities away from home
- The loss or uninhabitability of the child's home as the result of a natural disaster

In Georgia and Ohio, parental powers may be delegated only to the child's grandparents. In North Carolina, a delegation of powers may be made only to a person who has a prior substantial relationship with the child. In South Carolina, South Dakota, and Guam, a power of attorney may be used only by a service member parent who is facing deployment. In Mississippi, a transfer of custody must be facilitated by a licensed child welfare agency, and any caregiver who is not a family member is subject to a background check.

## Restricting the Use of Advertising

Many parents who have rehomed their children are known to have utilized online forums or other media to advertise and facilitate the placement of their children without the benefit of safety and criminal background checks or a home study to determine the appropriateness of the placement.<sup>7</sup> In Colorado, Maine, North Carolina, and Wisconsin, no person may do any of the following:

- Advertise for the purpose of finding a child to take into permanent physical custody
- Advertise that the person will find a permanent physical placement for a child or arrange for or assist in the permanent physical placement of a child
- Advertise that the person will place a child in a permanent physical placement

Laws in eight states restrict the use of advertising for the purpose of adoption to departments of social services or licensed child-placing agencies.<sup>8</sup> In New Mexico, any nonlicensed person or entity must disclose that they are not licensed in any advertisement the person or entity makes.

<sup>7</sup> Children's Bureau. (2014). *Rehoming of adopted children: Responsibilities for states and opportunities in the provision of postadoption services*. [Information Memorandum IM-14-02]. Washington, DC: U.S. Department of Health and Human Services, Administration on Children, Youth and Families. Retrieved from <https://www.acf.hhs.gov/cb/resource/im1402>

<sup>8</sup> Alabama, California, Delaware, Florida, Georgia, Ohio, South Carolina, and Washington.

## Exceptions

In eight of the states in which UCT is prohibited, it is not a violation of the law prohibiting UCT if the child is placed with a relative of the child.<sup>9</sup> In Texas and Utah, a child's custody may be transferred to an adult family friend who has an established relationship with the child. In Utah, an Indian child may be placed with a member of his or her tribe. In seven states, the prohibition against advertising by individuals does not apply to a prospective adoptive parent who has a current favorable preplacement assessment that was completed by an entity that is authorized to perform home studies.<sup>10</sup>

In Montana, the 6-month time limit set for a temporary delegation of parental powers does not apply to a service member who is being deployed. Idaho extends its 6-month time limit to 12 months for a deploying service member parent and to 3 years when the child is being cared for by a grandparent or other family member. In Alaska, Mississippi, and Oregon, a transfer of custody may be extended to the entire time of deployment. In Mississippi and Oregon, the service member parent has 30 days after returning from deployment to resume custody of his or her child.

## Legal Consequences Related to UCT

In the states that have laws prohibiting UCT, an act of rehoming a child is a crime. In four states, UCT is classified as a misdemeanor;<sup>11</sup> in seven states UCT is a felony.<sup>12</sup> Laws in four states provide for specific penalties, either fines or incarceration or both.<sup>13</sup> In 10 states, an act of advertising to place a child or accept a child for an unregulated permanent placement also is a crime.<sup>14</sup> In six states, unauthorized advertising is classified as a

misdemeanor<sup>15</sup> and in two states the act is a felony.<sup>16</sup> Laws in five states provide specific penalties for a violation.<sup>17</sup> In Arkansas, Mississippi, Oklahoma, and West Virginia, a power of attorney executed by a parent does not constitute abandonment, desertion, abuse, neglect, or any evidence of unfitness as a parent, unless the parent or legal custodian fails to take custody of the child or execute a new power of attorney after the time limit set by statute has expired.

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be complete, additional information on these topics may be in other sections of a state's code as well as agency regulations and policies, case law, and informal practices and procedures.

## Suggested citation:

Child Welfare Information Gateway. (2018). *Unregulated custody transfers of adopted children*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.

<sup>9</sup> Arkansas, Iowa, Louisiana, Michigan, North Carolina, Texas, Utah, and Wisconsin.

<sup>10</sup> Colorado, Kansas, New Mexico, Ohio, South Carolina, Washington, and Wisconsin.

<sup>11</sup> Iowa (for a first offense), North Carolina, Utah, and Washington.

<sup>12</sup> Arkansas, Florida, Iowa (for a second or subsequent offense), Michigan, Missouri, North Carolina (if the child suffers an injury), and Texas.

<sup>13</sup> Arkansas (5 years' incarceration, \$5,000 fine), Louisiana (5 years' incarceration, \$5,000), Michigan (20 years' incarceration, \$100,000 fine), and Wisconsin (9 months' incarceration, \$10,000 fine).

<sup>14</sup> Alabama, California, Colorado, Florida, Georgia, Kansas, Maine, New Mexico, South Carolina, and Wisconsin.

<sup>15</sup> Alabama, California, Florida, Kansas, New Mexico, and South Carolina.

<sup>16</sup> Colorado and Georgia.

<sup>17</sup> Georgia (10 years' incarceration, \$10,000 fine, or both), Kansas (\$1,000 fine), Maine (\$5,000 fine), South Carolina (30 days' incarceration, \$500 fine, or both), and Wisconsin (9 months' incarceration, \$10,000 fine, or both).

## Alabama

*Current Through October 2017*

### Definitions

**Citation: Code of Ala. § 12-15-102**

A child may be adjudicated to be a 'dependent child' when the child has been placed for care or adoption in violation of the law.

### Prohibited or Required Actions Regarding Custody

**Citation: Code of Ala. §§ 26-10A-12; 26-10A-33; 26-10A-36**

All relinquishments (of a child for adoption) shall be signed or confirmed before any of the following:

- A judge or clerk of any court that has jurisdiction over adoption proceedings or a public officer appointed by the judge to take consents
- A person appointed to take consents by any agency that is authorized to conduct investigations or home studies
- A notary public

Only a parent, a parent of a deceased parent, a relative of the degree of relationship specified in § 26-10A-28, the Department of Human Resources, a licensed child-placing agency, or an agency approved by the department may place a minor for adoption. No person or entity other than the department or a licensed child-placing agency shall engage in the business of placing minors for adoption. Any person or entity making more than two unrelated placements of minors for adoption within the preceding 12-month period shall be deemed to be in the business of placing minors for adoption.

It shall be unlawful for any person, organization, corporation, partnership, hospital, association, or agency to advertise verbally, through print, electronic media, or otherwise that they will:

- Adopt children or assist in the adoption of children in violation of this chapter
- Place or assist in the placement of children in foster homes, group homes, or institutions in violation of this chapter
- Pay or offer money or anything of value to the parents of a child in violation of § 26-10A-34

### Exceptions

**Citation: Code of Ala. § 26-10A-33**

This section does not intend to make it unlawful for any person not engaged in the business of placing minors for adoption to give advice and assistance to a natural parent in an adoption. In making adoption arrangements, potential adopting parents and birth parents are entitled to the advice and assistance of legal counsel.

### Consequences

**Citation: Code of Ala. §§ 26-10A-33; 26-10A-36**

Any other person who places a minor for adoption is guilty, upon the first conviction, of a class A misdemeanor and upon subsequent convictions is guilty of a class C felony.

Any unlawful advertising of a child for adoption shall be punished as a class A misdemeanor.

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## Alaska

*Current Through October 2017*

### Definitions

**Citation: Alaska Stat. § 13.26.066**

The term 'parent' includes a stepparent or a grandparent, and a parent who is incarcerated for a criminal conviction, but not a foster parent. The term 'power of attorney' means a power of attorney entered into under this section.

### Prohibited or Required Actions Regarding Custody

**Citation: Alaska Stat. § 13.26.066**

A parent or a guardian of a minor child, by a properly executed power of attorney, may delegate to another person one or more powers regarding the care or custody of the minor child, including the right to enroll the child in school; the right to inspect and obtain copies of education records and other records concerning the child; the right to attend school activities and other functions concerning the child; and the right to give or withhold any consent or waiver with respect to school activities, medical treatment,

dental treatment, and other activity, function, or treatment that may concern the minor child. This delegation does not include the power or authority to consent to the marriage or adoption of the minor child, the performance or inducement of an abortion on or for the minor child, or the termination of parental rights to the minor child.

A power of attorney is not effective for a period that exceeds 1 year. After a power of attorney expires, a parent or guardian may enter into a new power of attorney.

A power of attorney does not change parental rights, legal rights, obligations, or other authority established by an existing court order and does not deprive the parent or guardian of rights, obligations, or other authority relating to the custody, visitation, or support of the minor child.

#### **Exceptions**

**Citation: Alaska Stat. § 13.26.066**

A power of attorney made by a military parent or guardian may be effective for a period that exceeds 1 year if the military parent or guardian is on active duty, but the power of attorney is not effective for a period that exceeds the length of the active duty plus 30 days.

#### **Consequences**

**Citation: Alaska Stat. § 13.26.066**

Except as otherwise determined under another statute, the execution of a power of attorney by a parent or guardian does not constitute abandonment, neglect, or abuse of the child under §§ 47.10.013 through 47.10.015, unless the parent or guardian, after the power of attorney expires, fails to retake custody of the child and does not execute a new power of attorney.

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### **American Samoa**

*Current Through October 2017*

#### **Definitions**

**Citation:**

This issue is not addressed in the statutes reviewed.

#### **Prohibited or Required Actions Regarding Custody**

**Citation: A. S. Code § 45.0401**

The court may, upon petition, terminate all rights of a parent or parents to a child in:

- Proceedings under § 45.0115(a)(3) by which the court has determined the child to be neglected by one or both parents or to be dependent
- Proceedings under § 45.0115(a)(5) by which a parent or parents jointly or either of them voluntarily relinquish all the parental rights that they may have in a child, whether natural or adopted

No parent may relinquish his or her parental rights to a child other than in accordance with the provisions of this chapter.

#### **Exceptions**

**Citation:**

This issue is not addressed in the statutes reviewed.

#### **Consequences**

**Citation:**

This issue is not addressed in the statutes reviewed.

## Arizona

*Current Through October 2017*

### Definitions

#### Citation:

This issue is not addressed in the statutes reviewed.

### Prohibited or Required Actions Regarding Custody

#### Citation: Rev. Stat. §§ 14-5104; 8-108

A parent of a minor may delegate to another person, by a properly executed power of attorney, any powers he or she may have regarding care, custody, or property of the minor, except power to consent to marriage or adoption of the minor, for a period not exceeding 6 months.

A person who is not currently certified as acceptable to adopt but who has custody of a child who the person intends to adopt shall petition the court for an order permitting that person to keep custody of the child pending certification. The person shall file the petition no later than 5 days after the person obtains custody of the child. The court shall hold a hearing within 10 days after the person files the petition. The child shall attend the hearing, except for good cause shown. At the hearing, the burden of proof is on the petitioner to show that permitting custody is in the child's best interests. The court may permit the petitioner to have custody or it may order that custody be given to some other person or agency, as it deems to be in the child's best interests. If the court permits the person to continue to have custody of the child, the court shall order the investigation for preadoption certification and report as required by § 8-105 to continue. If an application for certification has not been filed before the hearing, the court shall order that an application for certification be filed within 30 days after the hearing date.

If a petition is not filed by the person intending to adopt a child, the division, an agency, or any other interested person may petition the court for such a hearing. On the filing of a petition the court shall set the matter for hearing and issue its order to the person having custody of the child to appear before it to show cause why custody should not be denied.

### Exceptions

#### Citation: Rev. Stat. § 8-108

A custody petition or hearing is not required in any of the following cases:

- The person who intends to adopt the child is the spouse of a birth parent of the child.
- The person who intends to adopt the child or one of these persons is an uncle, aunt, adult sibling, grandparent, or great-grandparent of the child of the whole or half-blood or by marriage.
- The person who intends to adopt the child is currently certified as acceptable to adopt the child.
- Custody of the child has been given or is to be given to an agency, the Department of Child Safety, or a licensed or certified foster home.
- The person who intends to adopt the child is currently the court-appointed guardian of the child.

### Consequences

#### Citation:

This issue is not addressed in the statutes reviewed.

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## Arkansas

*Current Through October 2017*

### Definitions

#### Citation: Ann. Code §§ 5-27-211; 9-27-303

The term 'adopted minor' means a person who is younger than age 18 and the subject of an adoption decree that is valid under the law of this state or another state, or foreign or international law.

The term 'relative' means a person within the fifth degree of consanguinity by virtue of blood or adoption.

The term 'transaction' includes, without limitation, transferring, advertising, recruiting, harboring, transporting, providing, soliciting, or obtaining a minor.

The term 'abandonment' means:

- The failure of the parent to provide reasonable support for a child and to maintain regular contact with a child through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future
- The failure of a parent to support or maintain regular contact with a child without just cause
- An articulated intent to forego parental responsibility

#### **Prohibited or Required Actions Regarding Custody**

**Citation: Ann. Code § 5-27-211**

A person commits the offense of rehomeing of a minor if he or she knowingly engages in:

- A transaction or an action taken to facilitate a transaction through electronic means or otherwise by an adoptive parent, an individual, or an entity having custody of an adopted minor that is taken:
  - » Without court approval
  - » Except as provided below, to avoid permanent parental responsibility by placing the minor in the physical custody of another person or entity
- The selling, transferring, or arranging for the sale or transfer of a minor to another person or entity for money or anything of value or to receive a minor for money or anything of value
- Assisting, aiding, abetting, or conspiring in the commission of an act described above by a person or an entity, regardless of whether money or anything of value has been promised to or received by the person or entity

#### **Exceptions**

**Citation: Ann. Code §§ 5-27-211; 9-27-303**

This section does not apply to:

- A person who places a minor with a relative, stepparent, a licensed agency, a licensed attorney, or the Department of Human Services
- Placement of a minor by a licensed attorney, a licensed agency, or the department
- Temporary placement of a minor by a parent or custodian for a designated short-term period with a specified intent and time period for return of the minor, if the temporary placement is due to a vacation or a school-sponsored function or activity; or the incarceration, military service, medical treatment, or incapacity of a parent or guardian
- Placement of a minor in accordance with the requirements of the Interstate Compact on the Placement of Children
- Relinquishment of a minor under the voluntary delivery of a child law, under § 9-34-201, et seq.

The term 'abandonment' does not include a situation in which a child has disrupted his or her adoption and the adoptive parent has exhausted the available resources.

#### **Consequences**

**Citation: Ann. Code § 5-27-211**

Rehomeing of a minor is an unclassified felony with a term of imprisonment of no more than 5 years and a fine of no more than \$5,000. It is not a defense to prosecution for a violation of this section that the adoptive parent solicited, advertised, or recruited through electronic means or otherwise and recruited a person that is a law enforcement officer acting within the official scope of his or her duties and posing as a person willing to accept placement of an adopted minor.

### **California**

*Current Through October 2017*

#### **Definitions**

**Citation:**

This issue is not addressed in the statutes reviewed.

#### **Prohibited or Required Actions Regarding Custody**

**Citation: Fam. Code § 8609**

Any person or organization that, without holding a valid and unrevoked license to place children for adoption issued by the Department of Social Services, advertises in any periodical or newspaper, by radio, or other public medium, that he, she, or it will place children for adoption; accept, supply, provide, or obtain children for adoption; or causes any advertisement to be published in or by any public medium soliciting, requesting, or asking for any child or children for adoption is guilty of a misdemeanor.

Any person, other than a birth parent, or any organization, association, or corporation that, without holding a valid and unrevoked license to place children for adoption issued by the department, places any child for adoption is guilty of a misdemeanor.

**Exceptions****Citation:**

This issue is not addressed in the statutes reviewed.

**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

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**Colorado**

*Current Through October 2017*

**Definitions****Citation: Rev. Stat. § 19-5-213.5**

The term 'advertise through a public medium' means to communicate by any public medium, including by newspaper, periodical, telephone book listing, outdoor advertising sign, radio, television, or by computerized communication system, which includes an Internet site, an Internet profile, or any similar medium of communication provided via the Internet. 'Advertising through a public medium' does not include communicating through personal or work electronic mail, text, or telephone.

**Prohibited or Required Actions Regarding Custody****Citation: Rev. Stat. § 19-5-213.5**

It is unlawful to advertise through a public medium for any of the following purposes:

- To find a child to adopt or to otherwise take permanent physical custody of a child
- To find an adoptive home or any other permanent physical placement for a child or to arrange for or assist in the adoption, adoptive placement, or any other permanent physical placement of a child
- To offer to place a child for adoption or in any other permanent physical placement with another person

**Exceptions****Citation: Rev. Stat. § 19-5-213.5**

This section does not apply to:

- An employee of the state Department of Human Services, a county Department of Social Services, or a licensed child-placing agency who is acting within the scope of his or her employment to place a child for adoption or in foster care
- An individual or agency that provides adoption information through the statewide adoption resource registry
- An adoption exchange whose membership includes county departments and licensed child-placing agencies that provide information and referral services to find adoptive homes and to promote adoption
- An individual who contacts and has entered into an agreement with or is actively working with any of the agencies or entities described above to place his or her child for adoption
- A person who advertises fertility-related services
- An individual who has received a favorable recommendation regarding his or her fitness to be an adoptive parent in this state from the department or a child-placing agency licensed in this state or in another jurisdiction from an entity authorized by that jurisdiction to conduct studies of potential adoptive homes
- A licensed attorney who advertises his or her availability to practice or provide services relating to the adoption of children

**Consequences****Citation: Rev. Stat. § 19-5-213.5**

Unauthorized advertising of a child is a class 6 felony.

## Connecticut

*Current Through October 2017*

### Definitions

#### Citation:

This issue is not addressed in the statutes reviewed.

### Prohibited or Required Actions Regarding Custody

#### Citation: Ann. Stat. § 45a-727

An application for the adoption of a minor child not related to the adoptive parents shall not be accepted by the probate court, unless any of the following apply:

- The child sought to be adopted has been placed for adoption by the Commissioner of Children and Families or a child-placing agency, and the placement has been approved by the commissioner or agency.
- The placement requirements of this section have been waived by the Adoption Review Board as provided in § 45a-764.
- The application is for adoption of a minor child by a stepparent as provided in § 45a-733.
- The application is for adoption of a child by another person who shares parental responsibility for the child with the parent as provided in § 45a-724(a)(3).

### Exceptions

#### Citation:

This issue is not addressed in the statutes reviewed.

### Consequences

#### Citation: Ann. Stat. §§ 45a-727; 45a-729

The commissioner or a child-placing agency may place for adoption a child who has been identified or located by a prospective parent, provided any such placement shall be made in accordance with regulations promulgated by the commissioner pursuant to § 45a-728. If any such placement is not made in accordance with those regulations, the adoption application shall not be approved by the probate court.

Any person who places a child for adoption in violation of § 45a-727 or 45a-764 or assists in such a placement shall be guilty of a class D felony.

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## Delaware

*Current Through October 2017*

### Definitions

#### Citation: Ann. Code Tit. 13, § 901

The term 'to place' includes any of the following activities, each of which may be performed only by the Department of Services for Children, Youth and Their Families; a licensed agency; or an authorized agency: the selection of an approved family for the child, the arrangement for the child's move into an adoptive home, or the relocation of the child with an adoptive family.

### Prohibited or Required Actions Regarding Custody

#### Citation: Ann. Code Tit. 13, §§ 904; 926; 930

No petition for adoption shall be presented unless, prior to the filing of the petition, the child sought to be adopted has been placed for adoption by the department, a licensed agency, or an authorized agency, and the placement has been supervised by the department or a licensed agency. No placement for an identified adoption in which an intermediary has been involved shall be approved or permitted by the department or a licensed agency.

An adoptive placement shall not be made until a preplacement evaluation that complies with the Delaware Requirements for Child Placing Agencies has been completed by the department or licensed agency.

No child shall be brought or received into the state for the purpose of adoption without the approval of the department.

No natural parent or prospective adoptive parent; anyone acting on behalf of the natural or prospective adoptive parent; or person, firm, corporation, organization, or other legal entity, except the department or a licensed agency, shall advertise in this state regarding the availability of adoption services or for the placement of a child for the purpose of adoption.

**Exceptions****Citation: Ann. Code Tit. 13, § 904**

Such placement or supervision shall not be necessary in the case of:

- A child sought to be adopted by a stepparent
- A child sought to be adopted by a blood relative, except as provided in § 926 of this title
- A child sought to be adopted by a guardian or permanent guardian as long as guardianship or permanent guardianship has been granted for at least 6 months prior to filing the adoption petition

**Consequences****Citation: Ann. Code Tit. 13, § 926**

No petition for adoption of a child brought or received into this state in violation of this section shall be presented or granted.

**District of Columbia**

*Current Through October 2017*

**Definitions****Citation:**

This issue is not addressed in the statutes reviewed.

**Prohibited or Required Actions Regarding Custody****Citation: Ann. Code § 21-2301**

The parent of a child may create a revocable custodial power of attorney that grants to another person any of the parent's rights and responsibilities regarding the care, physical custody, and control of the child, including the ability to do any of the following:

- Enroll the child in school
- Obtain from the school educational and behavioral information about the child
- Consent to all school-related matters regarding the child
- Consent to medical, psychological, or dental treatment for the child

The custodial power of attorney may not grant authority to consent to the marriage or adoption of the child.

The custodial power of attorney shall not affect the rights of the parent of the child in any proceeding concerning custody of the child or the allocation of parental rights and responsibilities for the care of the child.

**Exceptions****Citation:**

This issue is not addressed in the statutes reviewed.

**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

**Florida**

*Current Through October 2017*

**Definitions****Citation: Ann. Stat. § 827.10**

The term 'desertion' means to leave a child in a place or with a person other than a relative with the intent not to return to the child and with the intent not to provide for the care of the child.

### **Prohibited or Required Actions Regarding Custody**

**Citation: Ann. Stat. § 63.212**

It is unlawful for any person to do any of the following:

- To place or attempt to place a minor for adoption with a person who primarily lives and works outside this state, unless all of the requirements of the Interstate Compact for the Placement of Children, when applicable, have been met
- To place or attempt to place within the state a minor for adoption, unless the minor is placed with a relative or with a stepparent, except if an adoption entity
- To sell or surrender, or to arrange for the sale or surrender of, a minor to another person for money or anything of value or to receive such minor child for such payment or thing of value
- Having the rights and duties of a parent with respect to the care and custody of a minor, to assign or transfer those parental rights for the purpose of, incidental to, or otherwise connected with, selling or offering to sell such rights and duties
- To assist in the commission of any act prohibited above
- To place an advertisement or offer to the public, in any way, by any medium whatever that a minor is available for adoption or that a minor is sought for adoption, except if an adoption entity

### **Exceptions**

**Citation: Ann. Stat. § 827.10**

This section does not apply to a person who surrenders a newborn infant in compliance with § 383.50.

### **Consequences**

**Citation: Ann. Stat. §§ 63.212; 827.10**

A person who willfully and with criminal intent violates any provision of § 63.212 commits a felony of the third degree, punishable as provided in §§ 775.082, 775.083, or 775.084.

A person who willfully and with criminal intent violates the paragraph that prohibits advertising for adoption commits a misdemeanor of the second degree, punishable as provided in § 775.083; and each day of continuing violation shall be considered a separate offense.

A caregiver who deserts a child under circumstances in which the caregiver knew or should have known that the desertion exposes the child to unreasonable risk of harm commits a felony of the third degree, punishable as provided in §§ 775.082, 775.083, or 775.084.

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## **Georgia**

*Current Through October 2017*

### **Definitions**

**Citation: Ann. Code § 19-8-24**

The term 'inducements' includes any financial assistance, either direct or indirect, from whatever source, except payment or reimbursement of the medical expenses directly related to the mother's pregnancy and hospitalization for the birth of the child and medical care for the child.

### **Prohibited or Required Actions Regarding Custody**

**Citation: Ann. Code §§ 19-8-24; 19-9-122**

It shall be unlawful for any person, organization, corporation, hospital, or association of any kind that is not a child-placing agency to:

- Advertise that the person or entity will adopt children or arrange for children to be placed for adoption
- Directly or indirectly hold out inducements to parents to part with their children

It shall be unlawful for any person to sell, offer to sell, or conspire with another to sell a child for money or anything of value, except as otherwise provided in this chapter.

A parent of a minor child may delegate to any grandparent residing in this state caregiving authority regarding the minor child when hardship prevents the parent from caring for the child. This authority may be delegated without the approval of a court by executing in writing a power of attorney for the care of a minor child in a form substantially complying with the provisions of this article.

Hardships may include, but are not limited to:

- A parent being unable to provide care due to the death of the other parent
- A serious illness or terminal illness of a parent
- The physical or mental condition of the parent or the child such that proper care and supervision of the child cannot be provided by the parent
- The incarceration of a parent
- The loss or uninhabitability of the child's home as the result of a natural disaster
- A period of active military duty of a parent exceeding 24 months

Hardship shall not include the granting of a power of attorney for the care of a minor child for the purpose of subverting an investigation of the child's welfare initiated by the Department of Human Services or other agency responsible for such investigations.

### Exceptions

**Citation: Ann. Code §§ 19-8-24; 19-9-126**

The law prohibiting adoption advertising does not apply to either of the following:

- Communication by private means, including only written letters or oral statements, by an individual seeking to adopt a child or place that individual's child for adoption, whether the communication occurs before or after the birth of the child
- Any communication that contains any attorney's name, address, telephone number, or any combination of such information and that requests any attorney named in that communication to be contacted to facilitate the carrying out of the purpose of the individual making such personal communication

Nothing in this article shall preclude a parent or agent grandparent from granting temporary written permission to seek emergency medical treatment or other services for a minor child while in the custody of an adult who is not the parent or agent grandparent and who is temporarily supervising the child at the parent's or agent grandparent's request.

### Consequences

**Citation: Ann. Code § 19-8-24**

Any person who violates § 19-8-24 shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine not to exceed \$10,000 or imprisonment for no more than 10 years, or both, in the discretion of the court.

## Guam

*Current Through October 2017*

### Definitions

**Citation:**

This issue is not addressed in the statutes reviewed.

### Prohibited or Required Actions Regarding Custody

**Citation: Ann. Code §§ 39A201; 39A.202**

The parents of a child may enter into a temporary agreement granting custodial responsibility during deployment. The agreement must be in writing and signed by both parents and any nonparent to whom custodial responsibility is granted. An agreement, if feasible, must:

- Identify the destination, duration, and conditions of the deployment that is the basis for the agreement
- Specify the allocation of caregiving authority among the deploying parent, the other parent, and any nonparent
- Specify any decision-making authority that accompanies a grant of caregiving authority
- Specify any grant of limited contact to a nonparent
- If custodial responsibility is shared by the other parent and a nonparent, provide a process to resolve any dispute that may arise
- Specify the frequency, duration, and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact, and the allocation of any costs of contact
- Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available

- Acknowledge that any party's child-support obligation cannot be modified by the agreement and that changing the terms of the obligation during deployment requires modification in the appropriate court
- Provide that the agreement will terminate after the deploying parent returns from deployment
- If the agreement must be filed with the court, specify which parent is required to file the agreement

An agreement is temporary and terminates after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under § 39A203. The agreement does not create an independent, continuing right to caregiving authority, decision-making authority, or limited contact in an individual to whom custodial responsibility is given.

#### **Exceptions**

##### **Citation:**

This issue is not addressed in the statutes reviewed.

#### **Consequences**

##### **Citation:**

This issue is not addressed in the statutes reviewed.

## **Hawaii**

*Current Through October 2017*

#### **Definitions**

##### **Citation:**

This issue is not addressed in the statutes reviewed.

#### **Prohibited or Required Actions Regarding Custody**

##### **Citation: Rev. Stat. § 560:5-105**

A parent or guardian of a minor or incapacitated person, by a power of attorney, may delegate to another person any power regarding the care, custody, or property of the minor or ward, except the power to consent to marriage or adoption. The power of attorney may not exceed 1 year, and the time limit shall be expressly stated in the document.

#### **Exceptions**

##### **Citation:**

This issue is not addressed in the statutes reviewed.

#### **Consequences**

##### **Citation:**

This issue is not addressed in the statutes reviewed.

## **Idaho**

*Current Through October 2017*

#### **Definitions**

##### **Citation:**

This issue is not addressed in the statutes reviewed.

#### **Prohibited or Required Actions Regarding Custody**

##### **Citation: Idaho Code § 15-5-104**

A parent or a guardian of a minor, by a properly executed power of attorney, may delegate to another person any of the parent's or guardian's powers regarding care, custody, or property of the minor or ward including, but not limited to, powers for medical care and educational care of the minor or ward, with the exception of the parent's or guardian's power to consent to marriage or adoption of a minor, for a period not exceeding 6 months. In the case of military personnel serving beyond the territorial limits of the United States, the power or attorney may not exceed 12 months.

The power of attorney does not need to be notarized or recorded to be valid. However, if the power is recorded, any revocation of the power by a writing also must be recorded before the revocation is effective.

**Exceptions**

**Citation: Idaho Code § 15-5-104**

The delegation for a minor to a grandparent, a sibling, or to a sibling of either parent shall continue in effect until the time period, date, or condition set forth in the power of attorney for automatic expiration of the power of attorney occurs. If the power of attorney does not provide a time period, date, or condition for automatic expiration of the power, the power of attorney shall continue in effect for a period of 3 years. The power may be revoked prior to the expiration of the 3-year period, or prior to the time period, or date, or condition for automatic expiration, in a writing delivered to the grandparent or sibling by the delegating parent or guardian.

**Consequences**

**Citation:**

This issue is not addressed in the statutes reviewed.

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**Illinois**

*Current Through October 2017*

**Definitions**

**Citation: Comp. Stat. Ch. 750, § 50/1**

The term 'secondary placement' means a placement, including, but not limited to, the placement of a youth in care, that occurs after a placement disruption or an adoption dissolution. The term 'unregulated placement' means the secondary placement of a child that occurs without the oversight of the courts, the Department of Children and Family Services, or a licensed child welfare agency.

**Prohibited or Required Actions Regarding Custody**

**Citation:**

This issue is not addressed in the statutes reviewed.

**Exceptions**

**Citation:**

This issue is not addressed in the statutes reviewed.

**Consequences**

**Citation:**

This issue is not addressed in the statutes reviewed.

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**Indiana**

*Current Through October 2017*

**Definitions**

**Citation:**

This issue is not addressed in the statutes reviewed.

**Prohibited or Required Actions Regarding Custody**

**Citation: Ann. Code § 29-3-9-1**

By a properly executed power of attorney, a parent of a minor may delegate to another person for a period not exceeding 12 months any powers regarding health care, support, custody, or property of the minor. A delegation is effective immediately, unless otherwise stated in the power of attorney. A parent of a minor may not delegate the power to consent to the marriage or adoption of a minor.

A person having a power of attorney has and shall exercise, for the period during which the power is effective, all other authority of the parent or guardian respecting the health care, support, custody, or property of the minor, except any authority expressly excluded in the written instrument delegating the power. The parent remains responsible for any act or omission of the person having the power of attorney with respect to the affairs, property, and person of the minor as though the power of attorney had never been executed.

**Exceptions****Citation: Ann. Code § 29-3-9-1**

A parent who is a member of the United States armed services may delegate the powers described above for a period longer than 12 months if the parent is on active duty service. However, the term of delegation may not exceed the term of active duty service plus 30 days. The power of attorney must indicate that the parent is required to enter or serve in the active military service of the United States and include the estimated beginning and ending dates of the active duty service.

**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

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**Iowa**

*Current Through October 2017*

**Definitions****Citation: Ann. Code § 600A.2**

'To abandon a minor child' means that a parent, putative father, custodian, or guardian rejects the duties imposed by the parent-child relationship, guardianship, or custodianship, which may be evinced by the person, while being able to do so, making no provision or making only a marginal effort to provide for the support of the child or to communicate with the child.

**Prohibited or Required Actions Regarding Custody****Citation: Ann. Code §§ 600A.4; 600A.10**

A parent shall not permanently alter the parent-child relationship, except as ordered by a juvenile court or court. The provision of termination of parental rights, child placement, or adoption services to any biological or adoptive parent by any person other than an adoption service provider or the department is prohibited.

**Exceptions****Citation: Ann. Code § 600A.4**

Custody of a minor child may be assumed by a stepparent or a relative of that child within the fourth degree of consanguinity or transferred by an acceptance of a release of custody. A person who assumes custody or an adoption service provider that accepts a release of custody under this section becomes, upon assumption or acceptance, the custodian of the minor child.

**Consequences****Citation: Ann. Code § 600A.10**

A person who commits a prohibited practice under this subsection is guilty of a serious misdemeanor for the first violation and a class C felony for any second or subsequent violation.

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**Kansas**

*Current Through October 2017*

**Definitions****Citation: Ann. Stat. § 38-2202**

The term 'abandon' or 'abandonment' means to forsake, desert or, without making appropriate provision for substitute care, cease providing care for the child.

The term 'child in need of care' refers to a person younger than age 18 who has been placed for care or adoption in violation of law.

**Prohibited or Required Actions Regarding Custody****Citation: Ann. Stat. § 59-2123**

Any person who advertises that he or she will adopt, find an adoptive home for a child, or otherwise place a child for adoption shall state in such advertisement whether or not he or she is licensed and if licensed, under what authority such license is issued and in what profession.

No person shall offer to adopt, find a home for, or otherwise place a child as an inducement to any parent, guardian, or custodian of a child to place that child in that person's home, institution, or establishment.

**Exceptions****Citation: Ann. Stat. § 59-2123**

The provision regarding advertising for adoption shall not apply to the Kansas Department for Children and Families or to an individual seeking to adopt a child.

**Consequences****Citation: Ann. Stat. § 59-2123**

Any person who violates the provisions of this section shall be guilty of an unclassified misdemeanor and shall be fined no more than \$1,000 for each violation.

**Kentucky**

*Current Through October 2017*

**Definitions****Citation:**

This issue is not addressed in the statutes reviewed.

**Prohibited or Required Actions Regarding Custody****Citation: Rev. Stat. § 199.473**

All persons other than a child-placing agency or institution, the Department for Community Based Services, or persons exempted by § 199.470 who wish to place or receive a child shall make written application to the secretary for permission to place or receive a child. Prior to the approval of an application to place or receive a child, the required fee shall be paid and a home study will be completed. The purpose of the home study is to review the background of the applicant and determine the suitability of the applicant to receive a child, taking into account at all times the best interests of the child for whom application to receive has been made.

Upon a finding by the circuit court that the child should be placed prior to the secretary's ruling on the application, the circuit court may grant the applicant temporary custody of the child pending the decision of the secretary. Temporary custody shall not be granted to an applicant unless a background check, including but not limited to a criminal records check and a check of child abuse and neglect records, has been submitted to and reviewed by the court. The background check required for temporary custody shall be part of the home study.

When either the custodial parent or parents of the child to be placed or the persons wishing to receive the child reside out-of-state, the requirements of § 615.030, Interstate Compact on the Placement of Children, shall be met before the cabinet gives approval for the child's placement.

**Exceptions****Citation: Rev. Stat. § 199.470**

No petition for adoption shall be filed unless prior to the filing of the petition the child sought to be adopted has been placed for adoption by a child-placing institution or agency or by the Cabinet for Health and Family Services, or the child has been placed with written approval of the secretary. No approval shall be necessary in the case of:

- A child sought to be adopted by a stepparent, grandparent, sister, brother, aunt, uncle, great grandparent, great aunt, or great uncle; however, the court in its discretion may order a home study and a background check as provided in § 199.473
- A child received by the proposed adopting parent or parents from an agency outside this state with the written consent of the secretary
- A child adopted under the provisions of § 199.585(1) regarding the recognition of an adoption decree issued by a court or other governmental authority with appropriate jurisdiction in a foreign country when the child to be adopted has been approved for United States citizenship

**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

## Louisiana

*Current Through October 2017*

### Definitions

**Citation: Rev. Stat. § 14:46.4**

Rehoming of a child is any one of the following:

- A transaction or any action taken to facilitate such transaction, through electronic means or otherwise, by a parent or any individual or entity with custody of a child who intends to avoid or divest him- or herself of permanent parental responsibility by placing the child in the physical custody of a nonrelative, without court approval
- The selling, transferring, or arranging for the sale or transfer of a minor child to another person or entity for money or anything of value or to receive such minor child for such payments or thing of value
- Assisting, aiding, abetting, or conspiring in the commission of any act described above by any person or entity, regardless of whether money or anything of value has been promised to or received by the person

Actions include but are not limited to transferring, recruiting, harboring, transporting, providing, soliciting, or obtaining a child for such transaction.

### Prohibited or Required Actions Regarding Custody

**Citation: Rev. Stat. § 14:46.4**

Any action described above with regards to rehoming a child is prohibited.

### Exceptions

**Citation: Rev. Stat. § 14:46.4**

Rehoming does not include:

- Placement of a child with a relative, stepparent, licensed adoption agency, licensed attorney, or the Department of Children and Family Services
- Placement of a child by a licensed attorney, licensed adoption agency, or the department
- Temporary placement of a child by parents or custodians for designated short-term periods with a specified intent and time period for return of the child, due to a vacation or a school-sponsored function or activity; or the incarceration, military service, medical treatment, or incapacity of a parent
- Placement of a child in another state in accordance with the requirements of the Interstate Compact on the Placement of Children
- Relinquishment of a child pursuant to the provisions of the Safe Haven Law, Children's Code art. 1149, et seq.

### Consequences

**Citation: Rev. Stat. § 14:46.4**

Whoever commits the crime of rehoming of a child shall be fined no more than \$5,000 and shall be imprisoned at hard labor for no more than 5 years.

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## Maine

*Current Through October 2017*

### Definitions

**Citation: Rev. Stat. Tit. 42, § 4002(1-A)**

The term 'abandonment' includes any conduct on the part of the parent showing intent to forego parental duties or relinquish parental claims. The intent may be evidenced by any conduct indicating intent to forego parental duties or relinquish parental claims.

### Prohibited or Required Actions Regarding Custody

**Citation: Rev. Stat. Tit. 17-A, § 553; Tit. 18-A, § 9-313**

A person is guilty of abandonment of a child if, being a parent, guardian, or other person legally charged with the long-term care and custody of a child or being a person to whom the long-term care and custody of a child has been expressly delegated, he or she, with the intent to avoid or divest him- or herself of permanent parental responsibility, places the child with or transfers the physical custody of the child to a nonrelative without court approval.

A person may not do any of the following:

- Advertise for the purpose of finding a child to adopt or to otherwise take into permanent physical custody
- Advertise that the person will find an adoptive home or any other permanent physical placement for a child or arrange for or assist in the adoption, adoptive placement, or any other permanent physical placement of a child
- Advertise that the person will place a child for adoption or in any other permanent physical placement
- Advertise for the purpose of finding a person to adopt or otherwise take into permanent custody a particular child

#### **Exceptions**

**Citation: Rev. Stat. Tit. 17-A, § 553; Tit. 18-A, § 9-313**

It is an affirmative defense to prosecution that the person, due to the incarceration, military service, medical treatment, or incapacity of the person, temporarily placed the child or transferred the physical custody of the child for a designated short-term period with a specific intent and time period for the return of the child.

Section 9-313 does not prohibit:

- The Department of Health and Human Services or a child-placing agency from advertising in accordance with rules adopted by the department
- An attorney licensed to practice in this state from advertising the attorney's availability to practice or provide services relating to the adoption of children

#### **Consequences**

**Citation: Rev. Stat. Tit. 17-A, § 553; Tit. 18-A, § 9-313**

The person who transfers the physical custody of the child younger than age 18 to a nonrelative without court approval commits a class D crime. The transfer of physical custody of a child younger than age 6 to a nonrelative without court approval is a class C crime. A person who violates § 9-313 commits a civil violation for which a fine of no more than \$5,000 may be adjudged.

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### **Maryland**

*Current Through October 2017*

#### **Definitions**

**Citation:**

This issue is not addressed in the statutes reviewed.

#### **Prohibited or Required Actions Regarding Custody**

**Citation:**

This issue is not addressed in the statutes reviewed.

#### **Exceptions**

**Citation:**

This issue is not addressed in the statutes reviewed.

#### **Consequences**

**Citation:**

This issue is not addressed in the statutes reviewed.

## Massachusetts

*Current Through October 2017*

### Definitions

#### Citation:

This issue is not addressed in the statutes reviewed.

### Prohibited or Required Actions Regarding Custody

#### Citation: **Ann. Laws Ch. 190B, § 5-103**

A parent or parents of a minor, other than a parent or parents whose parental rights have been terminated or a parent who has signed a voluntary surrender, may appoint a temporary agent for a period not exceeding 60 days and may delegate to such agent any power that the parent has regarding the care, custody, or property of the minor child, except the power to consent to marriage or adoption of a minor. No parent or guardian shall appoint a temporary agent when a court has ordered that the minor child be placed in the custody of a person other than the parent.

Any delegation under this section shall be by a writing signed by, or at the direction of, the parent(s) and attested by at least two witnesses age 18 or older, neither of whom is the temporary agent, together with the written acceptance of the temporary agent.

A parent or guardian may not appoint a temporary agent of a minor if the minor has another living parent whose whereabouts are known and who is willing and able to provide care and custody for the minor, unless the nonappointing parent consents to the appointment in writing. A parent may not appoint a temporary agent if the appointing parent's parental rights have been terminated or a parent who has signed a voluntary surrender.

Any delegation under this section may be revoked or amended by the appointing parent(s) and delivered to all interested persons. The authority of the temporary agent may be limited or altered by the court.

### Exceptions

#### Citation:

This issue is not addressed in the statutes reviewed.

### Consequences

#### Citation:

This issue is not addressed in the statutes reviewed.

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## Michigan

*Current Through October 2017*

### Definitions

#### Citation:

This issue is not addressed in the statutes reviewed.

### Prohibited or Required Actions Regarding Custody

#### Citation: **Comp. Laws §§ 700.5103; 750.136c**

By a properly executed power of attorney, a parent of a minor may delegate to another person, for a period not exceeding 180 days, any of the parent's powers regarding care, custody, or property of the minor, except the power to consent to marriage or adoption of the child. A parent shall not knowingly and intentionally delegate his or her powers regarding care and custody of the parent's child for longer than 180 days for the purpose of permanently transferring custody of the child in violation of § 750.136c.

If a guardian for a minor delegates any power under this section, the guardian shall notify the court within 7 days after execution of the power of attorney and provide the court the name, address, and telephone number of the attorney-in-fact.

A person shall not transfer or attempt to transfer the legal or physical custody of an individual to another person for money or other valuable consideration, except as otherwise permitted by law. A person shall not acquire or attempt to acquire the legal or physical custody of an individual for payment of money or other valuable consideration to another person, except as otherwise permitted by law.

Except as provided below, a person shall not do any of the following, whether or not the person receives money or other valuable consideration for so doing:

- Transfer or attempt to transfer the legal or physical custody of a child with the intent to permanently divest a parent of parental responsibility, except by order of a court of competent jurisdiction
- Arrange for or assist in the permanent transfer, adoption, adoptive placement, or any other permanent physical placement of a child, except for the performance of adoption activities under §§ 722.111 to 722.128, in the performance of the person's duties
- Assist, aid, abet, or conspire in the commission of an act described above

#### **Exceptions**

**Citation: Comp. Laws §§ 700.5103; 750.136c**

If a parent or guardian is serving in the armed forces of the United States and is deployed to a foreign nation, and if the power of attorney so provides, a delegation under this section is effective until the 31st day after the end of the deployment.

The above section does not apply when the child has been placed under one or more of the following conditions:

- With a relative, a child-placing agency, or the Department of Health and Human Services
- By a child-placing agency or the department
- In accordance with the Interstate Compact on Placement of Children
- With the intent that the child will be returned in less than 180 days
- With the specific intent that the child will be returned, the placement benefits the child, and it is based on the temporary needs of the family, including, but not limited to, one or more of the following:
  - » Respite for the child and family
  - » A vacation or school-sponsored activity or function
  - » A temporary inability of the parent or legal guardian to provide care for the child due to incarceration, military service, medical treatment, or other incapacity of the parent or legal guardian

#### **Consequences**

**Citation: Comp. Laws § 750.136c**

A person who violates this section is guilty of a felony punishable by imprisonment for no more than 20 years or a fine of no more than \$100,000, or both.

## **Minnesota**

*Current Through October 2017*

#### **Definitions**

**Citation:**

This issue is not addressed in the statutes reviewed.

#### **Prohibited or Required Actions Regarding Custody**

**Citation: Ann. Stat. § 524.5-211**

By a properly executed power of attorney, a parent may delegate to another person, for a period not exceeding 1 year, any powers regarding care, custody, or property of his or her minor child, except the power to consent to marriage or adoption of the child.

A parent who executes a delegation of powers under this section must mail or give a copy of the document to any other parent within 30 days of its execution, unless:

- The other parent does not have parenting time or has supervised parenting time.
- There is an existing order for protection under chapter 518B or a similar law of another state in effect against the other parent to protect the parent who is executing the delegation of powers or the child.

#### **Exceptions**

**Citation:**

This issue is not addressed in the statutes reviewed.

#### **Consequences**

**Citation:**

This issue is not addressed in the statutes reviewed.

## Mississippi

*Current Through October 2017*

### Definitions

#### Citation:

This issue is not addressed in the statutes reviewed.

### Prohibited or Required Actions Regarding Custody

#### Citation: Ann. Code §§ 93-31-3; 93-31-5

A parent or legal custodian of a child, by means of a properly executed power of attorney, may delegate to another willing person as attorney-in-fact any of the powers regarding the care and custody of the child, including, but not limited to, the right to enroll the child in school; the right to attend school activities and other functions concerning the child; and the right to give or withhold consent to school activities, medical and dental treatment, and any other activity, function or treatment that may concern the child. This delegation does not include the authority to consent to marriage or adoption of the child, the performance of an abortion on the child, or the termination of parental rights to the child.

A power of attorney must be facilitated by either a licensed child welfare agency or another charitable organization that is operating under the Safe Families for Children model. A full criminal history and child abuse and neglect background check must be conducted on any person who is not a grandparent, aunt, uncle, or sibling of the child if the person is:

- Designated or proposed to be designated as the attorney-in-fact
- A person older than age 15 who resides in the home of the designated attorney-in-fact

The parent of the child has the authority to revoke or withdraw the power of attorney at any time. Upon the termination, expiration, or revocation of the power of attorney, the child must be returned to the custody of the parent as soon as reasonably possible. Until the authority expires or is revoked or withdrawn by the parent or legal custodian, the attorney-in-fact shall exercise parental or legal authority on a continuous basis without compensation for the duration of the power of attorney.

### Exceptions

#### Citation: Ann. Code § 93-31-3

The term 'serving parent' means a parent who is a member of the United States armed forces, including any reserve component thereof, who is required to enter or serve in the active military. A serving parent may delegate the powers regarding the care and custody of the child for longer than 1 year if on active-duty service or if scheduled to be on active-duty service. The term of delegation, however, may not exceed the term of active-duty service plus 30 days.

### Consequences

#### Citation: Ann. Code § 93-31-3

The execution of a power of attorney by a parent does not, in the absence of other evidence, constitute abandonment, desertion, abuse, neglect, or any evidence of unfitness as a parent, unless the parent or legal custodian fails to take custody of the child or execute a new power of attorney after the 1-year time limit, or after a longer time period as allowed for a serving parent, has elapsed. Nothing in this subsection prevents the Department of Human Services or law enforcement from investigating allegations of abuse, abandonment, desertion, neglect, or other mistreatment of a child.

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## Missouri

*Current Through October 2017*

### Definitions

#### Citation:

This issue is not addressed in the statutes reviewed.

### Prohibited or Required Actions Regarding Custody

#### Citation: Rev. Stat. § 453.110

No person, agency, organization, or institution shall surrender custody of a minor child or transfer the custody of a child to another, and no person, agency, organization, or institution shall take possession or charge of a minor child so transferred, without first having filed a petition with the court and obtaining an order from the court approving or ordering transfer of custody.

If any surrender or transfer is made without first obtaining a court order, the court shall, on petition of any public official or interested person, agency, organization, or institution, order an investigation and report as described in § 453.070 to be completed by the Children's Division and shall make an order regarding the custody of the child that is in the best interests of the child. The investigation shall be initiated by the division within 48 hours, and the investigation and report shall be completed within 30 days. The court shall order the person having custody in violation of the provisions of this section to pay the costs of the investigation and report.

After the filing of a petition for the transfer of custody for the purpose of adoption, the court may enter an order of transfer of custody if the court finds all of the following:

- The required family assessment has been made and reviewed by the court.
- A recommendation has been made by the guardian ad litem.
- A petition for transfer of custody for adoption or an order terminating parental rights has been properly filed.
- The required financial affidavit has been filed.
- The written report regarding the child who is the subject of the petition containing the information required by § 453.026 has been submitted.
- The placement is in compliance with the Indian Child Welfare Act or the Interstate Compact on the Placement of Children, if applicable.

### Exceptions

**Citation: Rev. Stat. §§ 453.110; 453.014**

This section shall not be construed to prohibit any parent, agency, organization, or institution from placing a child with another individual for care if the right to supervise the care of the child and to resume custody thereof is retained, or from placing a child with a licensed foster home within the state through a child-placing agency licensed by this state as part of a preadoption placement. The child's parents, without the direct or indirect assistance of an intermediary, may place a minor for adoption in the home of a relative of the child within the third degree.

### Consequences

**Citation: Rev. Stat. § 453.110**

Any person who violates the terms of this section is guilty of a class E felony.

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## Montana

*Current Through October 2017*

### Definitions

**Citation:**

This issue is not addressed in the statutes reviewed.

### Prohibited or Required Actions Regarding Custody

**Citation: Ann. Code § 72-5-103**

A parent or a guardian of a minor, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 6 months, any powers regarding care, custody, or property of the minor child, except the power to consent to marriage or adoption of a minor.

### Exceptions

**Citation: Ann. Code § 72-5-103**

The 6-month limitation does not apply to:

- A member of the Montana National Guard who serves for more than 180 continuous days on duty
- A member of the active duty military forces of the United States
- A member of the federal reserves who serves for more than 180 continuous days on duty

### Consequences

**Citation:**

This issue is not addressed in the statutes reviewed.

## Nebraska

*Current Through October 2017*

### Definitions

#### Citation:

This issue is not addressed in the statutes reviewed.

### Prohibited or Required Actions Regarding Custody

#### Citation: Rev. Stat. § 30-2604

A parent or a guardian of a minor may delegate to another person, by a properly executed power of attorney, any of his or her powers regarding care, custody, or property of the minor child or ward for a period not exceeding 6 months, except his or her power to consent to marriage or adoption of a minor ward. A parent or guardian of a minor who is at least age 18 and who is not a ward of the state may delegate, by a properly executed power of attorney, to such minor the parent's or guardian's power to consent to such minor's own health care and medical treatment for a period not exceeding 1 year.

### Exceptions

#### Citation:

This issue is not addressed in the statutes reviewed.

### Consequences

#### Citation:

This issue is not addressed in the statutes reviewed.

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## Nevada

*Current Through October 2017*

### Definitions

#### Citation:

This issue is not addressed in the statutes reviewed.

### Prohibited or Required Actions Regarding Custody

#### Citation: Nev. 2017 Advanced Legis. Serv. Ch. 172, § 153

A parent may appoint in writing a short-term guardian for an unmarried minor child without the approval of a court if the parent has legal custody of the minor child. The appointment of a short-term guardian is effective for a minor who is age 14 or older only if the minor provides written consent to the guardianship. The appointment of a short-term guardian does not affect the rights of the other parent of the minor.

A parent shall not appoint a short-term guardian for a minor child if the minor child has another parent whose parental rights have not been terminated, whose whereabouts are known, and who is willing and able to make and carry out daily child care decisions concerning the minor, unless the other parent provides written consent to the appointment.

The written instrument appointing a short-term guardian becomes effective immediately upon execution and must include, without limitation:

- The date on which the guardian is appointed
- The name of the parent who appointed the guardian, the name of the minor child for whom the guardian is appointed, and the name of the person who is appointed as the guardian
- The signature of the parent and the guardian in the presence of a notary public acknowledging the appointment of the guardian

The short-term guardian appointed pursuant to this section serves as guardian of the minor for 6 months, unless the written instrument appointing the guardian specifies a shorter term or specifies that the guardianship is to terminate upon the happening of an event that occurs sooner than 6 months.

### Exceptions

#### Citation:

This issue is not addressed in the statutes reviewed.

**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

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**New Hampshire**

*Current Through October 2017*

**Definitions****Citation: Rev. Stat. §§ 170-C:5; 639:3**

The petition to terminate the parent-child relationship may be granted when the court finds that the parent has abandoned the child. It shall be presumed that the parent intends to abandon the child when the child has been left by his or her parent in the care and custody of another person without any provision for his or her support or without communication from the parent for a period of 6 months.

A person is guilty of endangering the welfare of a child if he or she knowingly endangers the welfare of a child younger than age 18 by purposely violating a duty of care, protection, or support that he or she owes to the child. The placement of a child for adoption or the attempt to place a child for adoption in violation of § 170-B:33 constitutes endangering the welfare of the child.

**Prohibited or Required Actions Regarding Custody****Citation: Rev. Stat. § 170-B:33**

It shall be unlawful for a child's parent or legal guardian to knowingly place a child for adoption or knowingly attempt to place a child for adoption through the use of a power of attorney or other legal document in this state, unless such parent or legal guardian follows the procedures for adoption set out in this chapter.

**Exceptions****Citation:**

This issue is not addressed in the statutes reviewed.

**Consequences****Citation: Rev. Stat. §§ 170-B:33; 639:3**

If a parent or legal guardian transfers physical custody of the child with the intent to permanently transfer physical and legal custody of the child to another and does not follow such procedures within 6 months of transferring physical custody of the child to another, he or she shall be deemed to have abandoned the child as described in § 170-C:5(l) and shall be guilty of endangering the welfare of a child under § 639:3.

Endangering the welfare of a child is a misdemeanor.

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**New Jersey**

*Current Through October 2017*

**Definitions****Citation:**

This issue is not addressed in the statutes reviewed.

**Prohibited or Required Actions Regarding Custody****Citation: Ann. Stat. § 3B:12-39**

By a properly executed power of attorney for a period not exceeding 6 months, a parent, except when custody of a minor has been awarded by a court of competent jurisdiction, with the consent of the other parent, if the latter is living and not incapacitated, or the child's guardian may delegate to another person any of his or her powers regarding care, custody, or property of the minor child, except his or her power to consent to the marriage or adoption of a minor ward.

**Exceptions****Citation:**

This issue is not addressed in the statutes reviewed.

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**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

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**New Mexico**

*Current Through October 2017*

**Definitions****Citation: Ann. Stat. § 32A-5-42.2**

For purposes of this section, the term 'advertise' means to communicate, market, promote, induce, or solicit by public media originating or distributed in New Mexico, including newspapers, periodicals, telephone book listings, outdoor advertising, radio, television, or other electronic media.

**Prohibited or Required Actions Regarding Custody****Citation: Ann. Stat. §§ 32A-5-42.2; 45-5-104**

A person, other than a person described in the Exceptions section below, shall not advertise adoption services, unless the advertisement includes the following statement: 'WARNING: (INSERT NAME OF PERSON ADVERTISED) IS NOT ACCREDITED, CERTIFIED OR LICENSED TO PROVIDE ADOPTION SERVICES WITHIN NEW MEXICO.' If the advertisement is in print, the required statement shall be entirely in uppercase letters and in a print size no smaller than that generally used in the advertisement. If the advertisement is spoken, the required statement shall be spoken at the same pace and volume as that generally used in the advertisement.

A parent or a guardian of a minor, by an acknowledged power of attorney, may delegate to another person, for a period not exceeding 6 months, any of the parent's or guardian's powers regarding care, custody, or property of the minor child, except the power to consent to marriage or adoption of a minor.

**Exceptions****Citation: Ann. Stat. § 32A-5-42.2**

This section does not apply to:

- The Children, Youth and Families Department or a person authorized to act on behalf of the department
- An agency licensed by the department
- An investigator or counselor
- An attorney licensed in the state who advertises legal services relating to adoption
- A prospective adoptive parent who is acting alone on his or her own behalf and who has a current, approved preplacement study as required by the department

**Consequences****Citation: Ann. Stat. § 32A-5-42.2**

A person who violates this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of § 32A-5-42. A violation of this section also constitutes an unfair or deceptive trade practice pursuant to the Unfair Practices Act (§ 57-12-1).

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**New York**

*Current Through October 2017*

**Definitions****Citation:**

This issue is not addressed in the statutes reviewed.

**Prohibited or Required Actions Regarding Custody****Citation:**

This issue is not addressed in the statutes reviewed.

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**Exceptions****Citation:**

This issue is not addressed in the statutes reviewed.

**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

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**North Carolina**

*Current Through October 2017*

**Definitions****Citation: Gen. Stat. § 14-321.2**

As used in this section, the following definitions apply:

- 'Minor child' means a child younger than age 18, including an adopted minor child.
- 'Parent' means a biological parent, adoptive parent, legal guardian, or legal custodian.
- 'Relative' means the child's other parent, stepparent, grandparent, adult sibling, aunt, uncle, first cousin, great-aunt, great-uncle, great-grandparent, or a parent's first cousin.
- 'Unlawful transfer of custody' means the transfer of physical custody of a minor child, in willful violation of applicable adoption law or by grossly negligent omission in the care of the child, by the child's parent, without a court order or other authorization under law, to a person other than a relative or another individual having a substantial relationship with the child. Compensation in the form of money, property, or other item of value is not required in order for an unlawful transfer of custody to occur.

**Prohibited or Required Actions Regarding Custody****Citation: Gen. Stat. § 14-321.2**

It shall be unlawful for:

- A parent to effect or attempt to effect an unlawful transfer of custody of that parent's minor child
- A person to accept or attempt to accept custody pursuant to an unlawful transfer of custody of a minor child, except that it shall not be unlawful for a person to receive custody of a child from a parent who intends to effect an unlawful transfer of custody of that parent's minor child if the person promptly notifies law enforcement or child protective services in the county where the child resides or is found and promptly makes the child available to law enforcement or child protective services
- A person to advertise, recruit, or solicit, or to aid, abet, conspire, or seek the assistance of another to advertise, recruit, or solicit the unlawful transfer of custody of a minor child

**Exceptions****Citation: Gen. Stat. § 14-321.2**

Unlawful transfer of custody does not include any of the following:

- Placement of a minor child with a prospective adoptive parent in substantial compliance with the applicable adoption laws of this state or of another state
- Placement of a minor child in accordance with the Interstate Compact on the Placement of Children or the Intercountry Adoption Act
- Temporary transfer of physical custody of a minor child to an individual with a prior substantial relationship with the child for a specified period of time due to:
  - » The child's medical, mental health, educational, or recreational needs
  - » The parent's inability to provide proper care or supervision for the minor child, which may be due to the parent's incarceration, military service, employment, medical treatment, incapacity, or other voluntary or involuntary absence
- Transfer of physical custody of a minor child to a relative
- Temporary transfer of physical custody of a minor child to a behavioral health facility or other health-care provider, an educational institution, or a recreational facility by a parent for a specified period of time due to the child's medical, mental health, educational, or recreational needs
- A voluntary foster care placement of the minor child made pursuant to an agreement between the minor child's parent and a county Department of Social Services

**Consequences****Citation: Gen. Stat. § 14-321.2**

Any person who commits an offense under this section is guilty of a class A1 misdemeanor. Any person who commits an offense under this section that results in serious physical injury to the child is guilty of a class G felony.

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**North Dakota**

*Current Through October 2017*

**Definitions****Citation:**

This issue is not addressed in the statutes reviewed.

**Prohibited or Required Actions Regarding Custody****Citation: Ann. Code § 30.1-26-04**

By a properly executed power of attorney for a period not exceeding 6 months, a parent or a guardian of a minor may delegate to another person any of the parent's or guardian's powers regarding care, custody, or property of the minor child, except the power to consent to marriage or adoption of a minor ward.

**Exceptions****Citation:**

This issue is not addressed in the statutes reviewed.

**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

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**Northern Mariana Islands**

*Current Through October 2017*

**Definitions****Citation:**

This issue is not addressed in the statutes reviewed.

**Prohibited or Required Actions Regarding Custody****Citation:**

This issue is not addressed in the statutes reviewed.

**Exceptions****Citation:**

This issue is not addressed in the statutes reviewed.

**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

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**Ohio**

*Current Through October 2017*

**Definitions****Citation: Rev. Code §§ 2151.03; 5103.17**

The term 'neglected child' includes any child whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of §§ 5103.16 and 5103.17.

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The term 'qualified adoptive parent' means a person who is eligible to adopt a child under § 3107.03 and for whom an assessor has conducted a home study to determine whether the person is suitable to adopt a child, if required by § 3107.031.

### **Prohibited or Required Actions Regarding Custody**

**Citation: Rev. Code §§ 3109.52; 5103.16; 5103.17**

The parent of a child may create a power of attorney that grants to a grandparent with whom the child is residing any of the parent's rights and responsibilities regarding the care, physical custody, and control of the child, including the ability to enroll the child in school; to obtain educational and behavioral information from the school district; to consent to all school-related matters; and to consent to medical, psychological, or dental treatment for the child. The power of attorney may not grant authority to consent to the marriage or adoption of the child. The power of attorney does not affect the rights of the child's parent in any future proceeding concerning custody of the child or the allocation of parental rights and responsibilities for the care of the child.

No child shall be placed for adoption unless placement is made by a public children services agency, an entity that is certified by the Department of Job and Family Services, or custodians in another state or foreign country, or unless all of the following criteria are met:

- Prior to the placement of the child, the parent personally has applied to and appeared before the probate court of the county in which the parent resides or in which the person seeking to adopt the child resides for approval of the proposed placement.
- The court ordered an independent home study of the proposed placement, and after completion of the home study, the court determined that the proposed placement is in the best interests of the child.
- The court has approved the proposed placement.

No person or government entity, other than a child-placing agency, shall advertise that the person or entity will adopt children or place them in foster homes, hold out inducements to parents to part with their offspring, or in any manner knowingly become a party to the separation of a child from the child's parents, except through a juvenile court or probate court commitment.

### **Exceptions**

**Citation: Rev. Code §§ 5103.16; 5103.17**

This section (requiring placement by an authorized agency) does not apply to an adoption by a stepparent, a grandparent, a grandparent's husband or wife, a legal custodian, or a guardian.

The biological parent of a child may advertise the availability for placement of the parent's child for adoption to a qualified adoptive parent.

A qualified adoptive parent may advertise that the qualified adoptive parent is available for placement of a child into the qualified adoptive parent's care for the purpose of adopting the child.

A government entity may advertise about its role in the placement of children for adoption or any other information that would be relevant to qualified adoptive parents.

### **Consequences**

**Citation: Rev. Code § 5103.17**

If the department has reasonable cause to believe a violation of this section has been committed, the department shall notify the attorney general or the county prosecutor, city attorney, village solicitor, or other chief legal officer of the political subdivision in which the violation has allegedly occurred. On receipt of the notification, the attorney general, county prosecutor, city attorney, village solicitor, or other chief legal officer shall take action to enforce this section through injunctive relief or criminal charge.

## Oklahoma

*Current Through October 2017*

### Definitions

#### Citation:

This issue is not addressed in the statutes reviewed.

### Prohibited or Required Actions Regarding Custody

#### Citation: Ann. Stat. Tit. 10, § 700

By a properly executed power of attorney for a period not to exceed 1 year, a parent or legal custodian of a child may delegate to another person any of the powers regarding the care and custody of the child, except the power to consent to marriage or adoption of the child, the performance of an abortion on the child, or the termination of parental rights to the child. A delegation of powers under this section shall not deprive the parent of any parental or legal authority regarding the care and custody of the child.

The parent or legal custodian of the child shall have the authority to revoke or withdraw the power of attorney at any time. If the delegation of authority lasts longer than 1 year, the parent or legal custodian of the child shall execute a new power of attorney for each additional year that the delegation exists.

### Exceptions

#### Citation:

This issue is not addressed in the statutes reviewed.

### Consequences

#### Citation: Ann. Stat. Tit. 10, § 700

A power of attorney executed by a parent or legal custodian shall not constitute abandonment, abuse, or neglect as defined in title 10A, § 1-1-105, unless the parent or legal custodian fails to make contact or execute a new power of attorney after the 1-year time limit has elapsed.

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## Oregon

*Current Through October 2017*

### Definitions

#### Citation:

This issue is not addressed in the statutes reviewed.

### Prohibited or Required Actions Regarding Custody

#### Citation: Ann. Stat. § 109.056

By a properly executed power of attorney for a period not exceeding 6 months, a parent or guardian of a minor may delegate to another person any of the powers of the parent or guardian regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.

### Exceptions

#### Citation: Ann. Stat. § 109.056

A servicemember-parent of a minor child may delegate the powers described above for a period not exceeding the term of active duty service plus 30 days. As used in this subsection, a 'servicemember-parent' is a parent or guardian who is on active duty with any branch of the United States military services.

### Consequences

#### Citation:

This issue is not addressed in the statutes reviewed.

**Pennsylvania**

*Current Through October 2017*

**Definitions****Citation:**

This issue is not addressed in the statutes reviewed.

**Prohibited or Required Actions Regarding Custody****Citation:**

This issue is not addressed in the statutes reviewed.

**Exceptions****Citation:**

This issue is not addressed in the statutes reviewed.

**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

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**Puerto Rico**

*Current Through October 2017*

**Definitions****Citation:**

This issue is not addressed in the statutes reviewed.

**Prohibited or Required Actions Regarding Custody****Citation:**

This issue is not addressed in the statutes reviewed.

**Exceptions****Citation:**

This issue is not addressed in the statutes reviewed.

**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

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**Rhode Island**

*Current Through October 2017*

**Definitions****Citation:**

This issue is not addressed in the statutes reviewed.

**Prohibited or Required Actions Regarding Custody****Citation:**

This issue is not addressed in the statutes reviewed.

**Exceptions****Citation:**

This issue is not addressed in the statutes reviewed.

**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

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**South Carolina**

*Current Through October 2017*

**Definitions****Citation: Ann. Code § 63-9-70**

For purposes of this section, the term 'advertise' means to communicate by newspaper, radio, television, hand bills, placards, or other print, broadcast, or electronic medium that originates within this state.

**Prohibited or Required Actions Regarding Custody****Citation: Ann. Code §§ 63-9-70; 63-15-520; 63-15-522**

No person or entity other than the Department of Social Services, a licensed child-placing agency, or an attorney licensed in this state may advertise that the person or entity will place or accept a child for adoption.

If no other parent possesses custodial responsibility under the law of this state, other than this article, or if an existing court order prohibits contact between the child and the other parent, a deploying parent may delegate all or part of his or her custodial responsibility to an adult nonparent for the period of deployment by power of attorney. The power of attorney is revocable by the deploying parent through a revocation of the power of attorney signed by the deploying parent.

An agreement or power of attorney made under this subarticle must be filed within a reasonable period of time with any court that has entered an existing order on custodial responsibility or child support concerning the child.

**Exceptions****Citation: Ann. Code § 63-9-70**

A person is not prohibited from advertising that the person desires to adopt if the person has a current preplacement home investigation finding that the person is suitable to be an adoptive parent.

**Consequences****Citation: Ann. Code § 63-9-70**

A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined no more than \$500 or imprisoned no more than 30 days, or both.

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**South Dakota**

*Current Through October 2017*

**Definitions****Citation:**

This issue is not addressed in the statutes reviewed.

**Prohibited or Required Actions Regarding Custody****Citation: Ann. Laws §§ 25-4B-204; 25-4B-205**

A deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state other than this chapter, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power.

An agreement or power of attorney under this article must be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect concerning the child who is the subject of the agreement or power.

**Exceptions****Citation:**

This issue is not addressed in the statutes reviewed.

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**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

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**Tennessee**

*Current Through October 2017*

**Definitions****Citation:**

This issue is not addressed in the statutes reviewed.

**Prohibited or Required Actions Regarding Custody****Citation: Ann. Code § 34-6-302**

A parent or parents of a minor child may delegate to any adult person residing in this state temporary care-giving authority regarding the minor child when hardship prevents the parent or parents from caring for the child. This authority may be delegated without the approval of a court by executing in writing a power of attorney for care of a minor child on a form provided by the Department of Children's Services. Hardships may include, but are not limited to:

- The serious illness or incarceration of a parent or legal guardian
- The physical or mental condition of the parent or legal guardian or the child is such that care and supervision of the child cannot be provided
- The loss or uninhabitability of the child's home as the result of a natural disaster

A local education agency (LEA) is not required to enroll a student with a power of attorney stating a hardship other than one of the three specifically stated above. The LEA may, however, enroll a student with a properly executed power of attorney for other hardships on a case-by-case basis.

The power of attorney for care of the minor child shall be signed by the parent and acknowledged before a notary public or two witnesses who shall sign and date their signatures concurrently and in each other's presence. For purposes of this section, the term 'parent' includes a legal guardian or legal custodian of the minor child.

**Exceptions****Citation:**

This issue is not addressed in the statutes reviewed.

**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

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**Texas**

*Current Through October 2017*

**Definitions****Citation: Pen. Code § 25.081**

The term 'adopted child' means a person younger than age 18 who was legally adopted through a governmental entity or through private means, including a person who was in foster care or from a foreign country at the time of the adoption.

The term 'unregulated custody transfer' means the transfer of the permanent physical custody of an adopted child by the parent, managing conservator, or guardian of the child without receiving approval of the transfer by a court as required by § 162.026, Family Code.

**Prohibited or Required Actions Regarding Custody****Citation: Fam. Code § 162.026; Pen. Code § 25.081**

A parent, managing conservator, or guardian of an adopted child may not transfer permanent physical custody of the child to any person who is not a relative or stepparent of the child or an adult who has a significant and long-standing relationship with the child, unless:

- The parent, managing conservator, or guardian files a petition with a court of competent jurisdiction requesting a transfer of custody.
- The court approves the petition.

Except as otherwise provided by this section, a person commits an offense if the person knowingly:

- Conducts an unregulated custody transfer of an adopted child
- Facilitates or participates in the unregulated custody transfer of an adopted child, including by transferring, recruiting, harboring, transporting, providing, soliciting, or obtaining an adopted child for that purpose

**Exceptions****Citation: Pen. Code § 25.081**

This section does not apply to:

- The placement of an adopted child with a licensed child-placing agency; the Department of Family and Protective Services; or an adult relative, stepparent, or other adult with a significant and long-standing relationship to the child
- The placement of an adopted child by a licensed child-placing agency or the Department of Family and Protective Services
- The temporary placement of an adopted child by the child's parent, managing conservator, or guardian for a designated short-term period with a specified intent and period for return of the child due to temporary circumstances, including:
  - » A vacation
  - » A school-sponsored function or activity
  - » The incarceration, military service, medical treatment, or incapacity of the parent, managing conservator, or guardian
- The placement of an adopted child in another state in accordance with the requirements of Subchapter B, Chapter 162, Family Code (Interstate Compact on the Placement of Children)
- The voluntary delivery of an adopted child under Subchapter D, Chapter 262, Family Code (relinquishment of an infant to an emergency services provider)

**Consequences****Citation: Pen. Code § 25.081**

An offense under this section is a felony of the third degree. The offense becomes a felony of the second degree if the actor commits the offense with intent to commit an offense under § 20A.02 (trafficking of persons), 43.02 (prostitution), 43.05 (compelling prostitution), 43.25 (sexual performance by a child), 43.251 (employment harmful to children), or 43.26 (possession or promotion of child pornography).

**Utah**

*Current Through October 2017*

**Definitions****Citation: Ann. Code § 78A-6-105**

The term 'neglect' includes abandonment of a child through an unregulated custody transfer.

'Unregulated custody transfer' means the placement of a child:

- With a person who is not the child's parent, stepparent, grandparent, adult sibling, adult uncle or aunt, legal guardian, or a friend of the family who is an adult and with whom the child is familiar, or a member of the child's federally recognized tribe
- With the intent of severing the child's existing parent-child or guardian-child relationship
- Without taking reasonable steps to ensure the safety of the child and permanency of the placement and the necessary steps to transfer the legal rights and responsibilities of parenthood or guardianship to the person taking custody of the child

**Prohibited or Required Actions Regarding Custody****Citation:**

This issue is not addressed in the statutes reviewed.

**Exceptions****Citation:**

This issue is not addressed in the statutes reviewed.

**Consequences****Citation: Ann. Code § 62A-4a-711**

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

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**Vermont**

*Current Through October 2017*

**Definitions****Citation:**

This issue is not addressed in the statutes reviewed.

**Prohibited or Required Actions Regarding Custody****Citation:**

This issue is not addressed in the statutes reviewed.

**Exceptions****Citation:**

This issue is not addressed in the statutes reviewed.

**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

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**Virgin Islands**

*Current Through October 2017*

**Definitions****Citation:**

This issue is not addressed in the statutes reviewed.

**Prohibited or Required Actions Regarding Custody****Citation: Ann. Code Tit. 15, § 5-105**

A parent or guardian of a minor, by a power of attorney for a period not exceeding 6 months, may delegate to another person any power regarding care, custody, or property of the minor or ward, except the power to consent to marriage or adoption.

**Exceptions****Citation:**

This issue is not addressed in the statutes reviewed.

**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

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**Virginia**

*Current Through October 2017*

**Definitions****Citation:**

This issue is not addressed in the statutes reviewed.

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**Prohibited or Required Actions Regarding Custody****Citation:**

This issue is not addressed in the statutes reviewed.

**Exceptions****Citation:**

This issue is not addressed in the statutes reviewed.

**Consequences****Citation:**

This issue is not addressed in the statutes reviewed.

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**Washington**

*Current Through October 2017*

**Definitions****Citation: Rev. Code § 26.33.400**

The term 'advertisement' means communication by newspaper, radio, television, handbills, placards or other print, broadcast, or the electronic medium.

**Prohibited or Required Actions Regarding Custody****Citation: Rev. Code §§ 26.33.370; 26.33.400**

Unless otherwise permitted by court order or statute, it is unlawful for any person, partnership, society, association, or corporation, except the parents, to assume the permanent care and custody of a child. Unless otherwise permitted by court order or statute, it is unlawful for any parent to relinquish or transfer to another person, partnership, society, association, or corporation the permanent care and custody of any child for adoption or any other purpose.

No person or entity shall cause to be published for circulation or broadcast on a radio or television station, within the geographic borders of this state, an advertisement of a child or children offered or wanted for adoption, or shall hold himself or herself out through such advertisement as having the ability to place, locate, dispose, or receive a child or children for adoption.

**Exceptions****Citation: Rev. Code § 26.33.400**

A person or entity is permitted to advertise for adoption if such person or entity is:

- A duly authorized agent, contractee, or employee of the Department of Social and Health Services, a children's agency, or institution licensed by the department to care for and place children
- A person who has a completed preplacement report with a favorable recommendation as to the fitness of the person to be an adoptive parent or such person's duly authorized uncompensated agent or licensed attorney

Nothing in this section prohibits an attorney licensed to practice in Washington state from advertising his or her availability to practice or provide services related to the adoption of children.

**Consequences****Citation: Rev. Code § 26.33.370**

Any relinquishment or transfer in violation of this section shall be void. Violation of this section is a gross misdemeanor.

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**West Virginia**

*Current Through October 2017*

**Definitions****Citation: Ann. Code § 48-31-102**

The term 'caregiving authority' means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access, and visitation.

'Custodial responsibility' refers to physical custodianship and supervision of a child. It usually includes, but does not necessarily require, the exercise of residential or overnight responsibility.

'Decision-making authority' means the power to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caregiving authority.

The term 'family member' includes a sibling, aunt, uncle, cousin, stepparent, or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state.

### **Prohibited or Required Actions Regarding Custody**

**Citation: Ann. Code § 49-8-3**

The following shall apply only to situations where a parent or guardian of a child provides for the temporary care and custody of a child with the assistance of a qualified nonprofit organization. Nothing in this section shall be interpreted to restrict the rights of parents or guardians providing for the care of children by power of attorney in other contexts.

A parent or guardian of a child may, by a properly executed power of attorney, delegate to a person the care and custody of the child for a period not to exceed 1 year. A parent may not delegate the power to consent to the child's marriage or adoption, the performance of an abortion on the child, or the termination of parental rights to the child.

A delegation of care and custody of a child does not change or modify any parental or legal rights, obligations, or authority that was established by an existing court order; or deprive the parent of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of the child.

The parent may revoke or withdraw this power of attorney at any time. Upon the termination, expiration, or revocation of the power of attorney, the child shall be returned to the custody of the parent within 48 hours. Unless the authority is revoked or withdrawn by the parent, the designee shall exercise parental or legal authority on a continuous basis without compensation for the duration of the power of attorney.

If a parent or guardian of a child wishes to utilize the power of attorney authorized by this section to delegate any powers regarding the care and custody of the child to another person, the qualified nonprofit organization shall conduct a criminal history and federal and state background check on the person to whom powers are delegated prior to the execution of the power of attorney.

### **Exceptions**

**Citation: Ann. Code §§ 48-31-201; 48-31-202; 48-31-204**

The parents of a child may enter into a temporary agreement under this article granting custodial responsibility during deployment. The agreement is temporary and terminates after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under § 48-31-203. The agreement does not create an independent, continuing right to caregiving authority, decision-making authority, or limited contact in an individual to whom custodial responsibility is given.

A nonparent who has caregiving authority, decision-making authority, or limited contact by an agreement under this article has standing to enforce the agreement until it has been terminated by court order, by modification under § 48-31-203, or under other provisions of this article.

A deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power.

### **Consequences**

**Citation: Ann. Code § 49-8-3**

The execution of a power of attorney by a parent, guardian, or legal custodian does not, without other evidence, constitute abandonment, abuse, or neglect, unless the parent, guardian, or legal custodian fails to either take custody of the child or execute a new power of attorney after the 1-year time limit has elapsed. Nothing in this article may be interpreted to prevent the Bureau for Children and Families or law enforcement from investigating allegations of abuse, abandonment, neglect, or other mistreatment of a child.

## Wisconsin

Current Through October 2017

### Definitions

**Citation: Ann. Stat. §§ 48.825; 48.979**

The term 'advertise' means to communicate by any public medium that originates within this state, including by newspaper, periodical, telephone book listing, outdoor advertising sign, radio, television, or by any computerized communication system, including by electronic mail, Internet site, Internet account, or any similar medium of communication provided via the Internet.

The term 'agent' means a person to whom delegation of the care and custody of a child is made under this section.

### Prohibited or Required Actions Regarding Custody

**Citation: Ann. Stat. §§ 48.825; 48.979**

No person may do any of the following:

- Advertise for the purpose of finding a child to adopt or to otherwise take into permanent physical custody
- Advertise that the person will find an adoptive home or any other permanent physical placement for a child or arrange for or assist in the adoption, adoptive placement, or any other permanent physical placement of a child
- Advertise that the person will place a child for adoption or in any other permanent physical placement

A parent who has legal custody of a child, by a power of attorney that is properly executed by all parents who have legal custody of the child, may delegate to an agent any of his or her powers regarding the care and custody of the child, except the power to consent to the marriage or adoption of the child, the performance or inducement of an abortion on or for the child, the termination of parental rights to the child, or the enlistment of the child in the U.S. armed forces. A delegation of powers does not deprive the parent of any of his or her powers regarding the care and custody of the child.

A delegation of powers to an agent may remain in effect for no longer than 1 year, except that such a delegation may remain in effect for longer than 1 year if the delegation is to a relative of the child or the delegation is approved by the court.

If a parent who wishes a delegation of powers to an agent who is not a relative of the child to remain in effect for longer than 1 year, the agent to whom the parent wishes to delegate those powers shall file a petition with the court requesting the court's approval of that delegation. A draft copy of the power of attorney delegating those powers shall be attached to the petition. The court shall hold a hearing on the petition within 45 days. At the hearing the court may approve the proposed delegation of powers if the court finds that the proposed delegation of powers is in the best interests of the child.

### Exceptions

**Citation: Ann. Stat. § 48.825**

The section prohibiting advertising by individuals does not apply to any of the following:

- The Department of Children and Families, a county department, or a licensed child welfare agency
- An individual or agency providing adoption information under § 48.55
- A foster care and adoption resource center
- An individual who has received a favorable recommendation regarding his or her fitness to be an adoptive parent in this state from the department, a county department, or a child welfare agency licensed in this state or in another jurisdiction from an entity authorized by that jurisdiction to conduct studies of potential adoptive homes

Nothing in this section prohibits an attorney licensed to practice in this state from advertising his or her availability to practice or provide services relating to the adoption of children.

### Consequences

**Citation: Ann. Stat. §§ 48.825; 48.979; 948.25**

No person may publish by a public medium an advertisement that violates this section. Any person who violates this section may be fined no more than \$10,000, imprisoned no more than 9 months, or both.

Any person who delegates his or her powers regarding the care and custody of a child to a person who is not a relative of the child for longer than 1 year without first obtaining the approval of the court as provided in this subsection is subject to a fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both.

Any person who sends a child out of this state, brings a child into this state, or causes a child to be sent out of this state or brought into this state for the purpose of permanently transferring physical custody of the child to a person who is not a relative, as defined in § 48.02(15), of the child is guilty of a class A misdemeanor. This section does not apply to any of the following:

- A placement of a child that is authorized under §§ 48.98, 48.988, or 48.99
- A placement of a child that is approved by a court of competent jurisdiction of the sending state or receiving state

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## Wyoming

*Current Through October 2017*

### Definitions

#### Citation:

This issue is not addressed in the statutes reviewed.

### Prohibited or Required Actions Regarding Custody

#### Citation:

This issue is not addressed in the statutes reviewed.

### Exceptions

#### Citation:

This issue is not addressed in the statutes reviewed.

### Consequences

#### Citation:

This issue is not addressed in the statutes reviewed.



U.S. Department of Health and Human Services  
Administration for Children and Families  
Administration on Children, Youth and Families  
Children's Bureau

