

# SENATE BILL REPORT

## SB 5548

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As Reported by Senate Committee On:  
Law & Justice, January 20, 2022

**Title:** An act relating to the uniform unregulated child custody transfer act.

**Brief Description:** Concerning the uniform unregulated child custody transfer act.

**Sponsors:** Senators Pedersen, Wagoner, Dhingra and Mullet; by request of Uniform Law Commission.

**Brief History:**

**Committee Activity:** Law & Justice: 1/13/22, 1/20/22 [DPS, w/oRec].

### Brief Summary of First Substitute Bill

- Prohibits a parent or guardian with custody of a child, as well as an individual with whom a child has been placed for adoption, from transferring custody of a child to someone beyond family members and other specified categories of individuals.
- Prohibits a person from receiving custody of a child, or facilitating in the transfer of custody of a child, if the person knows or reasonably should know that the transfer violates this Act.
- Requires the Department of Children, Youth, and Families to investigate probable violations of this Act, to take appropriate action to protect the child, and to prepare a report and to provide a copy of such report to the United States department of state when the department provides a child protective response for a child adopted or placed through an intercountry adoption.
- Prohibits unauthorized solicitation and advertising for the purpose of adopting or transferring, or finding a child to adopt or transfer in violation of this Act.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

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## SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5548 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Wagoner.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; McCune, Assistant Ranking Member; Honeyford.

**Staff:** Ryan Giannini (786-7285)

**Background:** 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. A violation of these prohibitions is a gross misdemeanor.

The Uniform Law Commission (ULC) is a state-supported, nonpartisan, nonprofit organization that drafts and proposes specific statutory language that may be adopted by states. In 2021, the ULC drafted the Uniform Unregulated Child Custody Transfer Act (Act) to prevent situations in which birth or adoptive parents would transfer custody of their child to another person outside of the child welfare system.

The Act provides a uniform legal framework to prohibit unregulated child custody transfers. An unregulated child custody transfer is a transfer by a parent or guardian of a child or an individual with whom a child has been placed for adoption that is performed without state agency or court oversight that assures the new custodian is safe and appropriate for the child. The provisions have not been adopted in any other state.

**Summary of Bill (First Substitute):** A parent, guardian, or individual with whom a child has been placed for adoption may transfer custody of the child to another person with intent to abandon the rights and responsibilities concerning the child only through adoption or guardianship, judicial award of custody, placement by or through a child-placing agency, other judicial or tribal action, or transfer of a newborn to a qualified person.

It is a gross misdemeanor for a parent or guardian with custody of a child, as well as an individual with whom a child has been placed for adoption, to transfer custody of a child to someone beyond family members and other specified categories of individuals if the parent, guardian, or individual with whom a child has been placed for adoption intends to abandon their rights and responsibilities regarding the child.

A person may not receive custody of a child, or act as an intermediary in a transfer of custody of child, if the person knows, or reasonably should know, the transfer is in violation of the prohibitions, unless a person notifies the Department of Children, Youth, and Families (DCYF) or law enforcement as soon as practicable after the transfer, or takes appropriate action to establish custody. A violation is a gross misdemeanor.

If DCYF has a reasonable basis to believe that a person has transferred or will transfer custody of a child in violation of this Act, DCYF must respond. The Act requires DCYF to prepare a report and to provide a copy of such a report to the United States Department of State when DCYF provides a child protective response for a child adopted or placed through an intercountry adoption. The disclosure of child welfare records to the United States Department of State is limited to only those confidential child welfare records that may assist the United States Department of State in informing the child's country of origin that the custody of the child has been transferred in an unregulated custody transfer and describing the child's welfare and plan for permanent placement of the child.

Unauthorized solicitation and advertising for the purpose of adopting or transferring, or finding a child to adopt or transfer in violation of the act constitutes an unfair or deceptive act or practice in trade or commerce.

The prohibitions of the Act apply to transfers of custody and unauthorized solicitations or advertisements on or after the effective date of this act.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):**

- Prohibits unauthorized solicitation and advertising for the purpose of adopting or transferring, or finding a child to adopt or transfer in violation of the act.
- Requires the Department of Children, Youth, and Families to prepare a report when the department provides a child protective response for a child adopted or placed through an intercountry adoption.
- Limits the disclosure of child welfare records to the United States Department of State in the cases of child protective responses for a child adopted or placed through an intercountry adoption to only those confidential child welfare records that may assist the United States Department of State in informing the child's country of origin that the custody of the child has been transferred in an unregulated custody transfer and describing the child's welfare and plan for permanent placement of the child.
- Defines "abandon" for purposes of the act.
- Clarifies that a parent or guardian of a child or an individual with whom a child has been placed for adoption may transfer custody of the child to another person with the intent, at the time of the transfer, to abandon the rights and responsibilities concerning the child through judicial award of custody, placement by or through a child-placing agency, a judicial award of custody or other action in a tribal court, or transfer of a newborn to a qualified person.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: This uniform act was developed by the Uniform Law Commission by request from the United States Department of State after a number of cases where parents of international adoptees with significant behavioral problems tried to re-home these adoptees and some adoptees were trafficked. Washington is a leader in adoption-related legislation. Most of the substance in this bill has been in state statute for many years, but there is still great value in having uniformity in the laws, especially for interstate adoption. This bill will also cover non-adoption-related custody transfers.

OTHER: The intent of the bill is appreciated, but there are a number of concerns with some of the details in the bill. The exception that parents can leave children in the care of an adult who had a close relationship with the child or guardian is too broad. This might allow things that the bill is trying to prevent. There also does not appear to be an exception to allow homeless youth to live in host homes. Additionally, search engines and online advertisers might be inadvertently liable for displaying prohibited advertisements that they did not affirmatively post.

**Persons Testifying:** PRO: Senator Jamie Pedersen, Prime Sponsor; Mark Demaray; Patrick Rawnsley, WSBA Family Law Executive Committee.

OTHER: Rebecca Faust.

**Persons Signed In To Testify But Not Testifying:** No one.