

MEMORANDUM

TO: National Conference of the Commissioners on Uniform State Laws

FROM: Maxine Eichner, Reporter, and Paul Kurtz, Chair, of the Drafting Committee on Visitation and Custody Issues Affecting Military Personnel and Their Families

DATE: June 8, 2012

RE: Issues Memorandum for the Uniform Deployed Parents Custody and Visitation Act

The following is a brief memorandum regarding the Uniform Deployed Parents Custody and Visitation Act, which is being read for the second time this summer. The Committee has been charged with constructing a uniform act that deals with the custody and visitation issues that arise for children who have parents who are service members. Currently, in the absence of an explicit statutory directive, there is considerable variation in how courts approach custody issues on a parent's deployment. Many courts will grant custody to the other natural parent for the duration of the deployment, even over the wishes of the deploying parent; some courts, however, will grant custody to the person that the service member wishes to designate as custodian, such as a grandparent. In cases in which the other parent has been granted custody, on the service member's return, some courts are loath to overturn a custody arrangement that is relatively stable – even one originally deemed only “temporary” – unless the child is shown to be significantly worse off living with the non-deployed natural parent. The result is a system in which there is considerable variability among courts when it comes to the treatment of deploying parents, and in which deploying parents are sometimes penalized for their service without clear gains for their children.

The only federal statutory protection for single-parent service members is the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C.A. app. §§ 501-96, which governs the general legal rights of a deploying service member. Under it, judges are required to grant stays of legal proceedings, including custody proceedings, when military service materially affects the service member's ability to participate in the proceedings. §522(b)(2); §584. Yet such stays are mandatory only for the first 90 days; after that, entry of such stays are discretionary, and often overridden by the interests of the affected children. Furthermore, the SCRA provides no procedures to facilitate entry of a temporary custody decision for the many service members who recognize that it is in their child's interests for custody to be settled during their absence. Neither does the SCRA give courts guidance regarding how to balance service members' interests against other relevant interests.

In recent years, the majority of states have sought to fill this gap by passing statutes that govern custody issues when service members are deployed. These statutes, however, vary widely from state to state, often fail to address the range of custody issues that service members face, and sometimes fail to weigh adequately the interests of others aside from the service members. The task of the Drafting Committee has been to draft a uniform act that properly balances the important interests of the deploying parent; the interests of the other parent; and, above all, the affected child.

At the Act's first reading last summer, the Drafting Committee was charged with simplifying the draft to the extent possible, as well as providing an out-of-court procedure for those parents who were able to resolve pre-deployment custody issues by themselves. The Drafting Committee has worked this year to accomplish both objectives.

Issues for Consideration:

1. Section 104: Continuing Exclusive Jurisdiction Pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act: Section 104 contains a jurisdictional provision that, in some circumstances, limits the effect that deployment may have on a state's continuing, exclusive jurisdiction of a child custody matter under the UCCJEA. Section 104 declares that if a temporary custody arrangement is established during a service member's deployment, either through agreement between the parents under Article II or by court order under Article III, the deploying parent's residence will not be deemed changed under the UCCJEA on account of the deployment itself.

By way of background: the UCCJEA provides that a state that has issued a custody order has continuing exclusive jurisdiction of child custody issues until one of two things happens:

(a) A court of [the issuing] state determines that the child, the child's parents, and any person acting as a parent do not have a significant connection with [the issuing] state and that substantial evidence is no longer available in [the issuing] state concerning the child's care, protection, training, and personal relationships; or

(b) A court of [the issuing] state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in [the issuing] state. § 14-13-202(1)(a)-(b).

The second of these subsections is intended to help ensure that parents do not have an incentive to take their child out-of-state in order to re-litigate custody issues. It is this second subsection that Section 104 of the UDPCVA seeks to affect.

By providing that the deploying parent's residence will not be deemed changed on account of the deployment, the UDPCVA would allow states that have entered existing child custody orders (either existing permanent orders before notice of deployment, or temporary orders on notice of deployment) in many instances to retain jurisdiction during deployment even if the nondeploying parent and child were to leave the state during the service member's deployment. The section would not authorize continuing exclusive jurisdiction, however, if other circumstances aside from the fact of deployment indicated

that the service member no longer resided in the state, such as if the service member sold their residence in that state or registered to vote in another state.

2. Article IV: Procedures for a New, Permanent Custody Order If the Court Deems Termination of the Temporary Order Inappropriate: Last year's draft of the UDPCVA contained a set of procedures that allowed the court to enter a new, permanent custody order in the event that the court determined, on the service member's return from deployment, that terminating the temporary custody order was inappropriate. The updated version of the act deletes these procedures both in the interest of simplicity and to ensure that the act retains its streamlined focus on ensuring the speedy and fair resolution of temporary custody on deployment, as well as the termination of the temporary custody arrangement, where appropriate, after deployment. Where a court determines termination of the temporary custody arrangement is not appropriate, and a permanent change of custody might accordingly be considered, the committee believes that entry of a new, permanent custody order would be better governed by the general custody law of the state, rather than this act.