

D R A F T

FOR APPROVAL

**UNIFORM DEPLOYED PARENTS
CUSTODY AND VISITATION ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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**UNIFORM DEPLOYED PARENTS
CUSTODY AND VISITATION ACT**

WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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June 5, 2012

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CUSTODY AND VISITATION ACT**

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UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

TABLE OF CONTENTS

PREFATORY NOTE..... 1

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. 3
SECTION 102. DEFINITIONS..... 3
SECTION 103. REMEDIES FOR NONCOMPLIANCE. 6
SECTION 104. JURISDICTION..... 6
SECTION 105. NOTICE REQUIRED OF DEPLOYING PARENT. 8
SECTION 106. DUTY TO NOTIFY OF CHANGE OF ADDRESS. 9
SECTION 107. GENERAL CONSIDERATION IN CUSTODY PROCEEDING OF
PARENT’S MILITARY SERVICE. 9

[ARTICLE] 2

**AGREEMENT ADDRESSING CUSTODIAL RESPONSIBILITY DURING
DEPLOYMENT**

SECTION 201. FORM OF AGREEMENT..... 10
SECTION 202. NATURE OF AUTHORITY CREATED BY AGREEMENT. 11
SECTION 203. MODIFICATION OF AGREEMENT..... 12
SECTION 204. POWER OF ATTORNEY. 12
SECTION 205. FILING AGREEMENT OR POWER OF ATTORNEY WITH COURT..... 13

[ARTICLE] 3

**JUDICIAL PROCEDURE FOR GRANTING CUSTODIAL RESPONSIBILITY DURING
DEPLOYMENT**

SECTION 301. PROCEEDING FOR TEMPORARY CUSTODY ORDER. 14
SECTION 302. EXPEDITED HEARING..... 14
SECTION 303. TESTIMONY BY ELECTRONIC MEANS 14
SECTION 304. EFFECT OF PRIOR JUDICIAL DECREE OR AGREEMENT..... 14
SECTION 305. GRANT OF CARETAKING OR DECISION-MAKING AUTHORITY TO
NONPARENT. 15
SECTION 306. GRANT OF LIMITED CONTACT. 17
SECTION 307. NATURE OF AUTHORITY CREATED BY ORDER 17
SECTION 308. CONTENT OF TEMPORARY CUSTODY ORDER..... 17
SECTION 309. ORDER FOR CHILD SUPPORT..... 18
SECTION 310. MODIFYING OR TERMINATING ASSIGNMENT OR GRANT OF
CUSTODIAL RESPONSIBILITY TO NONPARENT. 19

[ARTICLE] 4

RETURN FROM DEPLOYMENT

SECTION 401. CONSENT PROCEDURE FOR TERMINATING TEMPORARY GRANT OF CUSTODIAL RESPONSIBILITY ESTABLISHED BY AGREEMENT..... 20

SECTION 402. CONSENT PROCEDURE FOR TERMINATING TEMPORARY GRANT OF CUSTODIAL RESPONSIBILITY ESTABLISHED BY COURT ORDER 21

SECTION 403. VISITATION BEFORE TERMINATION OF TEMPORARY GRANT OF CUSTODIAL RESPONSIBILITY..... 21

SECTION 404. ADJUDICATED PROCEDURE FOR TERMINATING TEMPORARY GRANT OF CUSTODIAL RESPONSIBILITY ESTABLISHED BY AGREEMENT OR COURT ORDER..... 21

[ARTICLE] 5

MISCELLANEOUS PROVISIONS

SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION..... 24

SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT..... 24

SECTION 503. TRANSITION PROVISION. 24

SECTION 504. EFFECTIVE DATE..... 24

UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

PREFATORY NOTE

The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) addresses issues of child custody and visitation that arise when parents are deployed in military or other national service. Deployment in national service raises custody issues that are not adequately dealt with in the law of most states. In many instances, notice of deployment will be sudden, making it difficult to resolve custody issues before the deployment by ordinary child custody procedures. Furthermore, the overseas deployment of a parent raises special difficulties in ensuring that the parent-child bond remains intact during the parent's absence. In addition, the return from deployment raises questions regarding how and when the temporary custody situation should be ended and the permanent custody situation resumed. At all these stages, there is the need to ensure that parents who serve their country are not penalized for their service, while still giving adequate weight to the interests of the other parent, and, most importantly, the best interest of the child.

The issues surrounding child custody of service members are complicated by variance among the law of different states. Issues of child custody and visitation are the province of state law. Because of the mobile nature of military service, and because a child's other parent will often live in or move to a different state than the deployed service member, bringing the child with them, there are many times that custody issues relating to the child of a service member will involve two or more states. Currently, however, there are large differences among states in the law applied to custody issues that arise on the deployment of a parent. A number of states have adopted statutes that specifically address the custody issues that service members face, but these statutes vary widely among states in a number of respects. For example, the service members who are eligible for their protections differ considerably among states. Further, some of these statutes allow the service member to delegate custody to a person besides the child's other parent without a court order; others do not. Some provide for expedited court procedures before deployment; others do not. Some allow for automatic reversion to the permanent custody order on the service member's return from deployment; others do not. Other states have adopted no laws that specifically apply to custody issues relating to service members. These states differ with one another on how they treat custody issues on deployment, and, in addition, often apply very different laws to this situation than are applied in states that have adopted statutes. A uniform approach to these issues would greatly increase predictability and certainty for the families affected, and would increase fairness by ensuring that the same standards apply no matter where the parents lived or a family happened to be posted before deployment.

The Drafting Committee was assisted by numerous officially designated advisors and observers, representing an array of organizations. In addition to the American Bar Association advisors listed above, important contributions were made by Colonel Pam Harms, Staff Judge Advocate, U.S. Army Pacific; John T. Meixell, Chief, Legal Assistance Policy Division, U.S. Army; Major Lyndsey Olson, A.G.R. Deputy State Judge Advocate, Minnesota National Guard; Colonel Shawn Shumake, former U.S. Army Director, Office of Legal Policy; and Robert G. Spector, the Reporter for the Joint Editorial Board for Uniform Family Laws and the Reporter for the Uniform Child Custody Jurisdiction and Enforcement Act (1997).

Drafting of the UDPCVA began in 2010. The Act had its first reading at the Uniform Law Commission 2011 Annual Meeting, and was approved at the 20__ Annual Meeting.

The Structure of the UDPCVA

The UDPCVA is organized into five articles. Article 1 contains definitions and provisions that apply generally to custody matters of service members, including jurisdictional provisions, and notice requirements for deployed service members. This article also covers consideration of service member's service in custody proceedings generally, when imminent deployment is not an issue. Articles 2 and 3 apply to custody issues that arise on notice of and during deployment, depending on whether the parents reach an agreement or require a court to resolve these issues. In those cases where the parents resolve these issues between themselves, Article 2 sets out out procedural and substantive provisions that govern their agreement, and allows for an out-of-court transfer of custody during deployment. In the absence of the parents reaching an agreement, Article 3 sets out provisions for an adjudicated resolution of a custody dispute on the deployment or impending deployment of a service member. Article 4 governs termination of the temporary custody arrangement following the service member's return from deployment. This article contains one set of procedures that applies when the parents mutually agree that a temporary custody agreement should be terminated; another set applies when the parents mutually agree that a temporary custody order entered by a court should be terminated; a third set applies when the parents reach no agreement and require a court to resolve whether a return to the permanent custody arrangement is appropriate. Finally, Article 5 contains an effective date provision, a transition provision, and boilerplate provisions common to all uniform acts.

The Problem of Differing Terminology

States differ on the terminology that they use to describe issues of custody and visitation. The UDPCVA, however, seeks to retain some uniformity in the terminology used in custody cases arising from deployment, given the prospect that many of these cases will involve more than one jurisdiction. An enacting state that ordinarily uses different terminology than the UDPCVA is encouraged, insofar as it is possible, to add its terminology to the definitions of the specific terms used in the Act, without replacing the Act's specific terms or deleting the existing definitions of those terms. Use of common terms and definitions by states enacting the Act will facilitate resolution of cases involving multiple jurisdictions.

UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Deployed Parents Custody and Visitation Act.

SECTION 102. DEFINITIONS. In this [act]:

(1) “Adult” means an individual who is at least [18] years of age or an emancipated minor.

(2) “Caretaking authority” means the right to live with and care for a child on a day-to-day basis, including physical custody, parenting time, right to access, and visitation.

(3) “Child” means:

(A) an unemancipated individual who has not attained [18] years of age; or

(B) an adult son or daughter by birth or adoption, or under law of this state other than this [act], who is the subject of an existing court order concerning custodial responsibility.

(4) “Close and substantial relationship” means a relationship in which a significant bond exists between a child and a nonparent.

(5) “Court” means an entity authorized under law of this state other than this [act] to establish, enforce, or modify a decision regarding custodial responsibility.

(6) “Custodial responsibility” means the powers and duties relating to caretaking, supervision, and decision making for a child. The term includes custody, physical custody, legal custody, parenting time, right to access, visitation, and the authority to designate limited contact with a child.

(7) “Decision-making authority” means the power to make important decisions regarding a child, including decisions regarding the child’s education, religious training, medical care,

1 extra curricular activities, and travel. The term does not include day-to-day decisions that
2 necessarily accompany a grant of caretaking authority.

3 (8) “Deploying parent” means a service member, who is deployed or has been notified of
4 impending deployment, and is:

5 (A) a parent of a child under law of this state other than this [act]; or

6 (B) an individual other than a parent who has custodial responsibility of a child
7 under law of this state other than this [act];

8 (9) “Deployment” means the movement or mobilization of a service member to a location
9 for more than [90] days but less than [18] months pursuant to official orders that:

10 (A) are designated as unaccompanied;

11 (B) do not authorize dependent travel; or

12 (C) otherwise do not permit the movement of family members to that
13 location.

14 (10) “Family member” includes a sibling, aunt, uncle, cousin, stepparent, or grandparent
15 of a child, and an individual recognized to be in a familial relationship with a child under law of
16 this state other than this [act].

17 (11) “Limited contact” means the opportunity for a nonparent to visit with a child for a
18 limited period of time. The term includes authority to take the child to a place other than the
19 residence of the child.

20 (12) “Nonparent” means an individual other than a deploying parent or other parent.

21 (13) “Other parent” means an individual who, in common with a deploying parent, is:

22 (A) the parent of a child under law of this state other than this [act]; or

23 (B) an individual other than a parent with custodial responsibility of a child under
24 law of this state other than this [act].

1 (14) “Record” means information that is inscribed on a tangible medium or that is stored
2 in an electronic or other medium and is retrievable in perceivable form.

3 (15) “Service member” means a member of a uniformed service.

4 (16) “State” means a state of the United States, the District of Columbia, Puerto Rico, and
5 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
6 of the United States.

7 (17) “Uniformed service” means:

8 (A) active and reserve components of the Army, Navy, Air Force, Marine Corps,
9 or Coast Guard of the United States;

10 (B) the Merchant Marine, the commissioned corps of the Public Health Service,
11 or the commissioned corps of the National Oceanic and Atmospheric Administration of the
12 United States; or

13 (C) the National Guard.

14 **Comment**

15 The definitional provisions establish one umbrella term, “custodial responsibility,” for
16 issues relating to custody, including the responsibility often referred to in other state custody law
17 as physical custody, visitation, and legal custody. The provisions also establish three sub-
18 categories of custodial responsibility that can be transferred to others during deployment in later
19 provisions of this act: “caretaking authority,” “decision-making authority,” and “limited
20 contact.” The terminology used for each of these sub-categories is original to the UDPCVA.
21 The term “caretaking authority” is meant to refer broadly to the authority to live with, spend time
22 with, or visit with a child. States often use a number of terms that fall within this definition,
23 including “primary physical custody,” “secondary physical custody,” “visitation,” and
24 “possessory conservatorship.” All these are meant to be subsumed under the term “caretaking
25 authority.”
26

27 In contrast, the term “decision-making authority” means the authority to make decisions
28 about a child’s life beyond the authority to make decisions that ordinarily accompanies a transfer
29 of caretaking authority under state custody law. This term is meant to encompass the authority
30 referred to in many states as “legal custody,” including the authority reasonably necessary to
31 make decisions such as the ability to enroll the child in a local school, to deal with medical care,
32 and to allow the child to engage in extracurricular activities and travel.
33

1 Finally, the term “limited contact” refers to a form of visitation with the child given to
2 nonparents on the request of a deployed service member. Limited contact allows the service
3 member to sustain his or her relationship with the child through designating either a family
4 member or other person with whom the child has a close relationship to spend time with the
5 child during the service member’s absence. The limited contact definition allows the possibility
6 that it may be granted to minors as well as adults. Thus a minor half-sibling or step-sibling of
7 the child could be granted limited contact during a service member’s deployment. This type of
8 contact with the child is a more limited form of visitation than courts usually grant to parents or
9 grandparents outside the deployment context

10
11 The definitional section in the UDPCVA also uses the term “parent.” This term is not
12 meant to be limited to relationships established through marriage, adoption, or blood, but is
13 intended to encompass any of the ways in which the law of the forum state allows parenting
14 relationships to be established. For example, if the law of the relevant state allows parenthood to
15 be established based on the fact that a child has been born or conceived within a civil union, this
16 would meet the UDPCVA’s definition of parent. Similarly, the term may encompass persons
17 who are not biological parents but have relied on assisted reproductive technology to bear a
18 child, if their relationship to the child would be recognized as a parental relationship under the
19 law of the state. In addition, persons who meet the definition of a de facto or psychological
20 parents could also fall within the definition of “parent,” if the law of the relevant state recognizes
21 such a status as a parental status. The term “family member” is also meant to be broadly
22 construed in order to encompass any of the ways that family relationships may be established
23 under the relevant state law.

24
25 The Act recognizes that there will be instances in which two of the children’s parents
26 may be deployed at the same time. In these circumstances, each parent will simultaneously meet
27 the definition of a “deploying parent” and an “other parent” for purposes of the UDPCVA.

28 The definition of “deploying parent” requires notice of deployment. This notice need not
29 be pursuant to the issuance of official orders. Instead, notice is intended to be construed broadly,
30 and includes being advised by a commanding officer or a designated representative that a
31 determination of deployment had been made and that orders of deployment will be issued.

32
33 **SECTION 103. REMEDIES FOR NONCOMPLIANCE.** In addition to other relief
34 provided by law of this state other than this [act], if a court finds that a party to a proceeding
35 under this [act] has acted in bad faith or intentionally failed to comply with this [act] or a court
36 order issued under this [act], the court may assess attorney’s fees and costs of the opposing party
37 and order other appropriate relief.

38 **SECTION 104. JURISDICTION.**

39 (a) A court may issue an order regarding custodial responsibility under this [act] only if

1 the court has jurisdiction pursuant to [the Uniform Child Custody Jurisdiction and Enforcement
2 Act]. If the court has issued a temporary order regarding custodial responsibility pursuant to
3 [Article] 3, the residence of the deploying parent is not changed by reason of the deployment for
4 the purposes of [the Uniform Child Custody Jurisdiction and Enforcement Act] during the
5 deployment.

6 (b) If a court has issued a permanent order regarding custodial responsibility before
7 notice of deployment and the parents modify that order temporarily by agreement pursuant to
8 [Article] 2, the residence of the deploying parent is not changed by reason of the deployment for
9 the purposes of [the Uniform Child Custody Jurisdiction and Enforcement Act].

10 (c) If a court in another state has issued a temporary order regarding custodial
11 responsibility as a result of impending or current deployment, the residence of the deploying
12 parent is not changed by reason of the deployment for the purposes of [the Uniform Child
13 Custody Jurisdiction and Enforcement Act].

14 (d) This section does not prohibit the exercise of temporary emergency jurisdiction by a
15 court under [Uniform Child Custody Jurisdiction and Enforcement Act].

16 **Comment**

17 This section has two primary functions. First, it declares that courts may enter an order
18 pursuant to the UDPCVA only if the court has jurisdiction pursuant to the Uniform Child
19 Custody Jurisdiction and Enforcement Act (UCCJEA). An exception is made allowing for the
20 exercise of temporary jurisdiction by a court in the case of emergencies.

21
22 Second, the section provides that once the forum court has either entered a temporary
23 order for custodial responsibility on account of a service member's deployment, or the parties
24 have entered into a temporary agreement for custody during deployment, for purposes of the
25 UCCJEA, the deploying parent's residence will not be changed on account of the deployment
26 itself. This section is not intended to prohibit the court from using other indicia of change of
27 residence of the deployed parent aside from the deployment itself, including buying or selling a
28 home, or changing voter registration, that would ordinarily be considered in determining
29 residence under the UCCJEA.
30

1 Subsection (d) is intended to make the reasonableness of a parent’s effort to comply with
2 Section 105 relevant in future determinations of custody involving the parent.

3
4 **SECTION 106. DUTY TO NOTIFY OF CHANGE OF ADDRESS.**

5 (a) Except as otherwise provided in subsection (b), an individual to whom custodial
6 responsibility has been assigned or granted during deployment pursuant to [Article] 2 or 3 shall
7 notify the deploying parent and any other individual with custodial responsibility of any change
8 of mailing address or residence until the assignment or grant is terminated . The individual shall
9 provide the notice to any court that has issued an existing custody or child support order
10 concerning the child.

11 (b) If an existing court order prohibits disclosure of the address or contact information of
12 an individual to whom custodial responsibility has been assigned or granted, a notification of
13 change of mailing address or residence under subsection (a) may be made only to the court that
14 issued the order. The court shall keep confidential the mailing address or residence of the
15 individual to whom custodial responsibility has been assigned or granted.

16 **SECTION 107. GENERAL CONSIDERATION IN CUSTODY PROCEEDING OF**
17 **PARENT’S MILITARY SERVICE.** In a proceeding for custodial responsibility of a child of a
18 service member, a court may not consider a parent’s past deployment or possible future
19 deployment in itself in determining the best interest of the child, but may consider the material
20 effect on the child of the parent’s past or possible future deployment.

21
22 *Legislative Note: It is contemplated that this Section will be codified separately from the rest of*
23 *the Act, as part of the general custody provisions of the state.*

24
25 **Comment**

26 [Section] 107, in contrast to later articles of the Act, does not directly concern custody
27 procedures in conjunction with a service members’ deployment. Instead, it seeks to amend the
28 state’s general standard for child custody to guard against the possibility that courts will use past
29 or possible future deployment as a negative factor in determining custody by service members

1 without serious consideration of whether the child’s best interest was or would be truly
2 compromised by such deployment.

3
4 This section prohibits the court from using a parent’s past deployment or possible future
5 deployment itself as a negative factor in determining the best interests of the child. However, the
6 material effects on the child of the parent’s past or possible future service may be considered.
7 For example, the court may consider that the child has bonded closely with step-siblings while in
8 a temporary custody during a deployment, or that the child does not adjust well to new situations
9 and therefore may have difficulty relocating if a parent is deployed in the future.

10
11 **[ARTICLE] 2**

12 **AGREEMENT ADDRESSING CUSTODIAL RESPONSIBILITY DURING**
13 **DEPLOYMENT**

14 **Comment**

15
16 Article 2 provides procedures for out-of-court resolution of issues of custodial
17 responsibility that arise on the deployment of a service member. This Article is intended to
18 encourage and facilitate the parents mutually agreeing to a custody arrangement during
19 deployment. Most of the Article governs the form and substance of agreements between the
20 parents regarding custody during deployment. In the event that a deploying parent is the only
21 parent of the child, section 204 allows custody arrangements during the service member’s
22 deployment to be made unilaterally by power of attorney.

23
24 **SECTION 201. FORM OF AGREEMENT.**

25 (a) The parents of a child may enter into an agreement granting custodial responsibility
26 during deployment.

27 (b) An agreement under subsection (a) must be:

28 (1) in writing;

29 (2) designated as temporary;

30 (3) signed by both parents and any nonparent to whom custodial responsibility is
31 granted.

32 (c) An agreement under subsection (a) may:

33 (1) identify to the extent feasible the destination, duration, and conditions of the
34 deployment that is the basis for the agreement;

- 1 (2) specify the allocation of caretaking authority among the deploying parent, the
2 other parent, and any nonparent, if applicable;
- 3 (3) specify any decision-making authority that accompanies a grant of caretaking
4 authority;
- 5 (4) specify any grant of limited contact to a nonparent;
- 6 (5) if the agreement shares custodial responsibility between the other parent and a
7 nonparent, or between two nonparents, provide a process to resolve any dispute that may arise;
- 8 (6) specify the frequency, duration, and means, including electronic means, by
9 which the deploying parent will have contact with the child, and any role to be played by the
10 other parent in facilitating the contact;
- 11 (7) specify the contact between the deploying parent and child during the time the
12 deploying parent is on leave or is otherwise available;
- 13 (8) acknowledge that any party’s existing child-support obligation cannot be
14 modified by the agreement, and that changing the terms of the obligation during deployment
15 requires modification in the appropriate court;
- 16 (9) provide that the agreement terminates according to the procedures under
17 [Article] 4; and
- 18 (10) if the agreement must be filed pursuant to Section 205, specify which parent
19 shall file the agreement.

Comment

20 Sections 201 provides that written agreements may be used to determine issues of
21 custodial responsibility during deployment, and set out the form of such agreements. The failure
22 of an agreement to meet these formal requirements, however, should not ordinarily be sufficient
23 to invalidate such an agreement.
24

SECTION 202. NATURE OF AUTHORITY CREATED BY AGREEMENT.

25 (a) An agreement under this [article] is temporary and terminates pursuant to [Article] 4
26

1 following the conclusion of deployment of the deployed parent, unless the assignment has been
2 terminated before that time by court order or modification of the agreement under Section 203.
3 The agreement derives from the parents' custodial responsibility and does not create an
4 independent, continuing right to caretaking authority, decision-making authority, or limited
5 contact in an individual to whom custodial responsibility is given.

6 (b) A nonparent given caretaking authority, decision-making authority, or limited contact
7 by an agreement under this [article] has standing to enforce the agreement until it has been
8 terminated pursuant to an agreement of the parents under Section 203, under [Article] 4, or by
9 court order.

10 **SECTION 203. MODIFICATION OF AGREEMENT.**

11 (a) The parents may modify an agreement regarding custodial responsibility made
12 pursuant to this [article] by mutual consent.

13 (b) If an agreement under subsection (a) is modified before deployment of a deploying
14 parent, the modification must be in writing and signed by both parents and a nonparent who will
15 exercise custodial responsibility under the modified agreement.

16 (c) If an agreement under subsection (a) is modified during deployment of a deploying
17 parent, the modification must be agreed to in a record by both parents and a nonparent who will
18 exercise custodial responsibility under the modified agreement.

19 **Comment**

20 Section 203 allows an agreement made pursuant to section 201 or modified pursuant to
21 section 203 to be modified during deployment in a record because of the practical difficulties
22 that may attend obtaining a signed agreement while a service member is deployed.

23
24 **SECTION 204. POWER OF ATTORNEY.** If no other parent possesses custodial
25 responsibility under law of this state other than this [act], or if an existing court order prohibits
26 contact between the child and the other parent, a deploying parent, by power of attorney, may

1 temporarily assign all or part of custodial responsibility to an adult nonparent. The power of
2 attorney is revocable by the deploying parent through a revocation of the power of attorney
3 signed by the deploying parent.

4 **SECTION 205. FILING AGREEMENT OR POWER OF ATTORNEY WITH**
5 **COURT.**

6 (a) An agreement or power of attorney made under this [article] must be filed with any
7 court that has entered an existing order on custodial responsibility or child support concerning
8 the child. The case number and heading of the existing case concerning custodial responsibility
9 or child support must be provided to the court with the agreement or power of attorney.

10 (b) Except as otherwise provided in subsection (c), the deadline for filing an agreement or
11 power of attorney is not later than [seven] days after execution or modification of the agreement
12 or power of attorney.

13 (c) If the circumstances of the deployment reasonably prevent a service member from
14 meeting the deadline in subsection (b), the service member shall file the agreement or power of
15 attorney as soon as practicable.

16 **[ARTICLE] 3**
17 **JUDICIAL PROCEDURE FOR GRANTING CUSTODIAL RESPONSIBILITY DURING**
18 **DEPLOYMENT**

19 **Comment**

20
21 Where the parents do not reach agreement on custody or visitation arrangements during
22 deployment, Article 3 provides for judicial resolution of these issues. Due to the fact that the
23 period between notice of deployment and actual deployment may be short, the UDPCVA does
24 not require that the parents attempt to reach an agreement pursuant to Article 2 before filing in
25 court pursuant to this Article. Instead, Articles 2 and 3 are alternative mechanisms by which
26 custody and visitation issues can be resolved. Article 3 provides a set of expedited procedures
27 for entry of a temporary custody order during deployment. It also declares that no permanent
28 custody order can be entered before or during deployment without the service member's consent.
29

1 **SECTION 301. PROCEEDING FOR TEMPORARY CUSTODY ORDER.**

2 (a) After a deploying parent receives notice of deployment and during the deployment, a
3 court may issue a temporary order granting custodial responsibility unless prohibited by the
4 Servicemembers Civil Relief Act, 50 U.S.C. Appx. Sections 521-522. A court may not issue a
5 permanent order granting custodial responsibility without the consent of the deploying parent.

6 (b) At any time after a deploying parent receives notice of deployment, either parent may
7 file a motion regarding custodial responsibility of a child during deployment. The motion shall
8 be filed in an existing [proceeding] for custodial responsibility of the child with jurisdiction
9 under Section 104 or, if there is no existing [proceeding] in a court with jurisdiction under
10 Section 104, in a new action for granting custodial responsibility during deployment.

11 **SECTION 302. EXPEDITED HEARING.** If a motion to grant custodial responsibility
12 is filed before a deploying parent deploys, the court shall conduct an expedited hearing.

13 **SECTION 303. TESTIMONY BY ELECTRONIC MEANS.** In a proceeding brought
14 under this [article], a party or witness who is not reasonably available to appear personally may
15 appear and provide testimony and present evidence by electronic means unless the court finds
16 good cause to require a personal appearance.

17 **SECTION 304. EFFECT OF PRIOR JUDICIAL DECREE OR AGREEMENT.** In
18 a proceeding for a grant of custodial responsibility pursuant to this [article], the following rules
19 apply:

20 (1) A prior judicial decree designating custodial responsibility of a child in the event of
21 deployment is binding on the court unless the circumstances meet the requirements of law of this
22 state other than this [act] for modifying a judicial decree regarding custodial responsibility.

23 (2) The court shall enforce a prior written agreement between the parents for designating
24 custodial responsibility of a child in the event of deployment, including a prior written agreement

1 executed under [Article] 2, unless the court finds the agreement contrary to the best interest of
2 the child.

3 **Comment**

4 Section 304 governs the court’s consideration of a past judicial decree or agreement
5 between the parents that specifically contemplates custody during a service member’s
6 deployment. In crafting this provision, the UDPCVA seeks to give significant deference to past
7 decrees and agreements in which issues of custody during deployment have already been
8 considered and resolved. At the same time, it seeks to balance the value of certainty gained by
9 leaving settled matters settled against the recognition that in some circumstances past
10 determinations may no longer be in the best interest of the child.

11
12 This provision gives somewhat more deference to custody provisions in prior judicial
13 decrees than in settlement agreements. To overturn the former, the challenger must first meet the
14 state’s standard for modifying a judicial decree regarding custodial responsibility. In most states,
15 this standard requires that there be a showing of a substantial or material change of
16 circumstances that was not foreseeable at the time the prior judicial decree was entered. Only if
17 a challenger meets that showing, as well as overcomes the presumption that the previous decree
18 was in the best interest of the child, may the court modify the earlier decree. In contrast, the
19 challenger of custody provisions established in a past agreement needs only to overcome the
20 presumption that these provisions are in the best interest of the child.

21 **SECTION 305. GRANT OF CARETAKING OR DECISION-MAKING**

AUTHORITY TO NONPARENT.

22 (a) On the motion of a deploying parent and in accordance with law of this state other
23 than this [act], a court may grant caretaking authority of a child to a nonparent who is an adult
24 family member of the child or an adult with whom the child has a close and substantial
25 relationship if it is in the best interest of the child.

26 (b) Unless the grant of caretaking authority to a nonparent under subsection (a) is agreed
27 to by the other parent, the grant is limited to an amount of time not greater than:

28 (1) the time granted to the deploying parent in an existing permanent custody
29 order, except that the court may add unusual travel time necessary to transport the child; or

30 (2) in the absence of an existing permanent custody order, the amount of time that
31 the deploying parent habitually cared for the child before being notified of deployment, except

1 that the court may add unusual travel time necessary to transport the child.

2 (c) A court may grant part of the deploying parent’s decision-making authority for a child
3 to a nonparent who is an adult family member of the child or an adult with whom the child has a
4 close and substantial relationship if the deploying parent is unable to exercise that authority.
5 When a court grants the authority to a nonparent, the court shall specify the decision-making
6 powers that will and will not be granted, including applicable medical, educational, and religious
7 decisions.

8 **Comment**

9 Section 305 allows the court, at the request of a deploying parent, to grant the service
10 member’s portion of custodial responsibility in the form of caretaking authority to an adult
11 nonparent who is either a family member or with whom the child has a close and substantial
12 relationship. The UDPCVA establishes no presumption for a grant of custodial responsibility
13 between such a nonparent and the child’s other parent. Instead, the court is to make the decision
14 based on the best interest of the child. In making this determination, it is expected that the court
15 will incorporate any presumptions in other state law against granting custodial responsibility to
16 perpetrators of domestic violence or to sexual offenders, or to those who reside with them.
17

18 While Section 305 provides that a grant of caretaking authority to a nonparent should
19 generally be limited to the amount of time that the deploying parent previously exercised
20 caretaking authority over the child, the court may vary this because of the practicalities of travel
21 relating to the temporary custody arrangement. For example, if a service member ordinarily
22 visited the child on Sundays, the court’s grant of this same custody schedule to the service
23 member’s parents would be impracticable if the child needed to travel by bus or plane to visit the
24 parents. In such a situation, the court might, for example, add the time for the child’s travel to
25 allow the grandparents a full day with the child.
26

27 This section also allows the court to grant some portion of the service member’s authority
28 to make important decisions for a child to a nonparent. Most states presume that some day-to-
29 day decision making authority automatically accompanies a court’s grant of caretaking authority
30 of a child. Section 305 allows the court to grant some of the decision making responsibility
31 ordinarily considered to be part of legal custody, including the ability to enroll the child in a local
32 school, to deal with medical care, to enroll the child in extracurricular activities, and to authorize
33 the child to travel. The Commission believes that it is important to allow grant of such decision-
34 making authority where a service member is deployed overseas and may not be available to
35 make these decisions.
36

37 Because Article 3 allows the court to grant to a nonparent only authority that a service
38 member already possesses, the court may not grant decision-making authority where the service
39 member has no legal custody rights. Furthermore, Section 305 contemplates that the court
40 ordinarily will not grant all the decision-making authority that generally accompanies legal

1 custody, such as the authority to give a minor permission to marry, or choosing the child's
2 religion. Because these decisions are generally not time-sensitive, it is expected that they will
3 generally remain with the parent who permanently holds custody, even during deployment.
4

5 **SECTION 306. GRANT OF LIMITED CONTACT.** On motion of a deploying
6 parent and in accordance with law of this state other than this [act], a court shall grant limited
7 contact with a child to a nonparent who is either a family member of the child or an individual
8 with whom the child has a close and substantial relationship, unless the court finds that the
9 contact would be contrary to the best interest of the child.

10 **Comment**

11 Because allowing the child contact with a person close to the deploying parent is a means
12 through which the service member can seek to ensure a continuing bond with the child, the
13 UDPCVA sets out a rebuttable presumption that such limited contact is in the best interest of the
14 child.
15

16 **SECTION 307. NATURE OF AUTHORITY CREATED BY ORDER.**

17 (a) A grant made pursuant to this [article] is temporary and terminates pursuant to
18 [Article] 4 following the conclusion of deployment of the deployed parent, unless the grant has
19 been terminated before that time by court order. The grant does not create an independent,
20 continuing right to caretaking authority, decision-making authority, or limited contact in an
21 individual to whom it is granted.

22 (b) A nonparent granted caretaking authority, decision-making authority, or limited
23 contact under this [article] has standing to enforce the grant until it is terminated under [Article]
24 4 or by court order.

25 **SECTION 308. CONTENT OF TEMPORARY CUSTODY ORDER.**

26 (a) An order granting custodial responsibility under this [article] must:

27 (1) designate the order as temporary; and

28 (2) identify to the extent feasible the destination, duration, and conditions of the
29 deployment.

1 (b) If applicable, a temporary order for custodial responsibility must:

2 (1) specify the allocation of caretaking authority, decision-making authority, or
3 limited contact among the deploying parent, the other parent, and any nonparent;

4 (2) if the order divides caretaking or decision-making authority between persons,
5 or grants caretaking authority to one person and limited contact to another, provide a process to
6 resolve any significant dispute that may arise;

7 (3) provide for liberal communication between the deploying parent and the child
8 during deployment, including through electronic means, unless contrary to the best interest of the
9 child;

10 (4) provide for liberal contact between the deploying parent and the child during
11 the time the deploying parent is on leave or is otherwise available, unless contrary to the best
12 interest of the child;

13 (5) provide for reasonable contact between the deploying parent and the child
14 following return from deployment until the temporary order is terminated, which may include
15 more time than the deploying parent spent with the child before entry of the temporary order;
16 and

17 (6) provide that the order will terminate following the conclusion of deployment
18 by further order of the court according to the procedures under [Article] 4.

19 **SECTION 309. ORDER FOR CHILD SUPPORT.** If a court has issued an order
20 providing for grant of caretaking authority under this [article], or an agreement granting
21 caretaking authority has been executed under [Article] 2, the court may enter a temporary order
22 for child support consistent with law of this state other than this [act] if the court has jurisdiction
23 under [the Uniform Interstate Family Support Act].

24 **Comment**
25

1 Section 309 recognizes that a change of custody during deployment will in many
2 instances require adjustment in child support, as a service member who normally is a custodial
3 parent now will appropriately pay support to the other parent or another custodian. Accordingly,
4 this section provides that a court determining caretaking authority during deployment may also
5 enter a temporary order for child support if, based on underlying state law, it would have
6 jurisdiction to enter such an order.

7
8 **SECTION 310. MODIFYING OR TERMINATING ASSIGNMENT OR GRANT**
9 **OF CUSTODIAL RESPONSIBILITY TO NONPARENT.**

10 (a) Except as otherwise provided in subsection (b) and consistent with the
11 Servicemembers Civil Relief Act, 50 U.S.C. Appx. Sections 521-522, on motion of a deploying
12 or other parent or any nonparent to whom caretaking authority, decision-making authority, or
13 limited contact has been granted, the court may modify or terminate an agreement for or grant of
14 caretaking authority, decision-making authority, or limited contact made pursuant to this [act] if
15 the modification or termination is consistent with this [article] and the court finds it is in the best
16 interest of the child. Any modification shall be temporary and terminates following the
17 conclusion of deployment of the deployed parent according to the procedures under [Article] 4,
18 unless the grant has been terminated before that time by court order.

19 (b) On motion of a deploying parent, the court shall terminate an order or agreement for
20 limited contact.

21 **Comment**

22
23 Section 310 provides that a court may modify temporary orders and agreements
24 concerning custodial responsibility during deployment if it is in the best interest of the child.
25 This standard is easier to meet than the standards for modifying custody generally used in most
26 states because it does not require that the court find a substantial or material change of facts
27 before modifying custody.

28 The UDPCVA makes termination of limited contact on a motion from the deploying
29 parent mandatory by the court. On such a motion, the court should not conduct an inquiry
30 concerning the child's best interests. The UDPCVA takes the position that because limited
31 contact is intended to further the deploying parent's relationship with the child, it should be
32 solely within the deploying parent's discretion to terminate this contact.

1 [ARTICLE] 4

2 RETURN FROM DEPLOYMENT

3 Comment

4
5 Article 4 sets out procedures governing the termination of the temporary custody
6 arrangement following the service member’s return from deployment. In doing so, the
7 UDPCVA seeks to balance the service member’s interest in quickly and easily reestablishing
8 custody against the possibility that resumption of custody may no longer be in the child’s best
9 interest because of changes in the child’s or service member’s situation. Concerns about the
10 child’s best interest resulted in rejection in the UDPCVA of an automatic reversion to the
11 previous custody order following the service member’s return. However, the Act still seeks to
12 make reversion as easy as possible for the service member without risking the child’s best
13 interests.

14 The Article sets out three parallel procedures by which a service member can seek the
15 return of custody. Section 401 sets out a consent procedure for terminating a temporary custody
16 agreement when the parents agree to the resumption of the permanent custody arrangement.
17 Section 402 sets out a consent procedure for terminating a temporary custody arrangement
18 established by court order that applies when both parents agree to the resumption of the
19 permanent custody arrangement. Where no agreement to the resumption of the permanent
20 custody arrangement is reached between the parents, Section 404 provides for resolution of
21 contested cases.

22
23 SECTION 401. CONSENT PROCEDURE FOR TERMINATING TEMPORARY
24 GRANT OF CUSTODIAL RESPONSIBILITY ESTABLISHED BY AGREEMENT.

25 (a) At any time following return from deployment, a temporary agreement granting
26 custodial responsibility under [Article] 2 may be terminated by an agreement to terminate signed
27 by the deploying parent and the other parent.

28 (b) The temporary agreement granting custodial responsibility terminates on the date
29 specified in the agreement to terminate. If no date is specified, the temporary agreement
30 granting custodial responsibility terminates on the date the agreement to terminate is signed by
31 both parents.

32 (c) If the temporary agreement granting custodial responsibility was filed with a court
33 pursuant to Section 205, the agreement to terminate the temporary agreement must also be filed
34 with that court not later than [seven] days after execution. The case number and heading of the

1 existing custodial responsibility or child support case must be provided to the court with the
2 agreement to terminate.

3 **SECTION 402. CONSENT PROCEDURE FOR TERMINATING TEMPORARY**
4 **GRANT OF CUSTODIAL RESPONSIBILITY ESTABLISHED BY COURT ORDER.** At
5 any time following return from deployment, the deploying parent and the other parent may file
6 with the court a stipulation to terminate a temporary order for custodial responsibility issued
7 under [Article] 3. After a stipulation has been filed, the court shall issue an order terminating the
8 temporary order on the date specified in the stipulation. If no date is specified, the court shall
9 issue the order immediately.

10 **SECTION 403. VISITATION BEFORE TERMINATION OF TEMPORARY**
11 **GRANT OF CUSTODIAL RESPONSIBILITY.** Following return from deployment of a
12 deploying parent until a temporary agreement or order for custodial responsibility established
13 under [Article] 2 or 3 is terminated, the court shall enter a temporary order granting the
14 deploying parent reasonable contact with the child unless it is contrary to the best interest of the
15 child, even if the time exceeds the time the deploying parent spent with the child before
16 deployment.

17 **SECTION 404. ADJUDICATED PROCEDURE FOR TERMINATING**
18 **TEMPORARY GRANT OF CUSTODIAL RESPONSIBILITY ESTABLISHED BY**
19 **AGREEMENT OR COURT ORDER.**

20 (a) Not later than six months following return from deployment, a deploying parent may
21 file a motion to terminate a grant of custodial responsibility made by agreement under [Article] 2
22 or by court order under [Article] 3. The motion must be filed in an existing action for custodial
23 responsibility of the child or, if no action exists, in a new action for custodial responsibility. The

1 motion must specify a date no sooner than [30] days after the motion is filed on which the
2 deploying parent requests the agreement or order be terminated.

3 (b) Unless an existing court order requires that the other parent's or nonparent's address
4 or contact information not be disclosed, the deploying parent shall mail a copy of a motion under
5 subsection (a) to the other parent and to any nonparent to whom caretaking authority has been
6 granted during deployment. If an existing court order prohibits disclosure of the address or
7 contact information of the other parent or nonparent, the motion may be filed only with the court
8 that issued the order. If the address of the other parent or nonparent is available to the court that
9 issued the order, the court shall forward the notification to the other parent or nonparent. The
10 court shall keep confidential the address or contact information of the other parent or nonparent.

11 (c) If the other parent consents to a motion under subsection (a), or if no timely objection
12 is filed either by the other parent or any nonparent to whom caretaking authority has been
13 assigned or granted, the court shall issue an order terminating the temporary agreement or order
14 on the date specified in the motion. If no date is specified, the court shall enter the order
15 immediately.

16 (d) If the other parent opposes a motion under subsection (a), or if the other parent does
17 not respond to a motion under subsection (a) and a nonparent to whom caretaking authority has
18 been granted objects to a motion under subsection (a), the court shall hold an expedited hearing,
19 unless the deploying parent waives an expedited hearing.

20 (e) Unless the court finds that granting a motion under subsection (a) to terminate the
21 temporary agreement or order is likely to cause the child substantial harm, the court shall issue
22 an order terminating the agreement or order.

23 (f) If the court determines that granting a motion under subsection (a) to terminate the
24 temporary agreement or order is likely to cause the child substantial harm, the court shall order

1 the temporary agreement or order to remain in effect or modify the agreement or order by
2 entering a new temporary order concerning custodial responsibility to provide for the best
3 interest of the child.

4 (g) The court may continue proceedings under subsection (a) to terminate a temporary
5 agreement or order for up to [six] months to review its determination that terminating the
6 temporary agreement or order is likely to cause the child substantial harm.

7 (h) If a motion under subsection (a) to terminate the temporary agreement or order has
8 not been filed within [six] months after a deployment has ended, proceedings regarding custodial
9 responsibility are governed by law of this state other than this [act].

10 **Comment**

11 A service member may fail to meet the six-month limit that Section 404 establishes for
12 the filing of a motion seeking to terminate the temporary custody arrangement or may exhaust
13 the procedures set out in this Article. Neither would bar the service member from seeking
14 resumption of custody of the child. As stated in subsection (h), the service member simply
15 would not be able to avail himself or herself of the special provisions for return of custody set
16 out in Article 4. Instead, the service member would need to follow the procedures and meet the
17 substantive standards that apply generally to child custody matters in the state.

18
19 Subsection (c) refers to a timely objection being filed to the deploying parent’s motion.
20 What constitutes a timely objection will be determined by other state law.

21
22 Subsection (e) provides that the court should grant a deploying parent’s motion to
23 terminate the temporary custody arrangement unless it finds that doing so is likely to cause the
24 child substantial harm. This standard is a higher standard for the individual challenging the
25 termination than the “best interest of the child” standard generally used to determine custody
26 matters. The higher standard represents a compromise between the automatic rescission of
27 temporary custody arrangements following the return from deployment established in some state
28 statutes and the standard “best interest” test generally applied in custody cases. This standard
29 recognizes that transfer of custody during deployment was intended to be temporary, and to
30 terminate following the service member’s return. The permanent custody arrangement is
31 therefore expected to resume unless doing so would be likely to cause substantial harm to the
32 child.

33
34 The likelihood of substantial harm standard in subsection (e) means that there may be
35 some cases in which the court authorizes return of custodial responsibility to deploying parent
36 when the arrangement is not in the child’s best interest. According to the UDPCVA, in the
37 absence of a [risk of harm,] such a challenge to the permanent custody arrangement is
38 appropriately dealt with under the standard custody procedures established by state law. The

1 challenger may still move for a change of custody in the best interests of the child; however, the
2 deploying parent should be able to resume the previous custody arrangement unless and until the
3 other parent proves his or her case.
4

[ARTICLE] 5

5 MISCELLANEOUS PROVISIONS

6 SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In
7 applying and construing this uniform act, consideration must be given to the need to promote
8 uniformity of the law with respect to its subject matter among states that enact it.

9 SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
10 AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal
11 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
12 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
13 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
14 U.S.C. Section 7003(b).

15 SECTION 503. TRANSITION PROVISION. This [act] does not affect the validity of
16 a temporary court order concerning custodial responsibility during deployment that was entered
17 before [the effective date of this [act]].

18 SECTION 504. EFFECTIVE DATE. This [act] takes effect