

DRAFT  
FOR DISCUSSION ONLY

# VISITATION AND CUSTODY ISSUES AFFECTING MILITARY PERSONNEL AND THEIR FAMILIES

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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For April 9 - 10, 2010 Committee Meeting

*Without Prefatory Note or Comments*

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March 25, 2010

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**VISITATION AND CUSTODY ISSUES AFFECTING MILITARY PERSONNEL AND  
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1 **VISITATION AND CUSTODY ISSUES AFFECTING MILITARY PERSONNEL AND**  
2 **THEIR FAMILIES**

3  
4 [Should this be more broadly named to cover all uniformed services?]

5 *An Act to establish procedures to determine child custody and visitation rights when a service*  
6 *member with children is deployed for military duty or otherwise called to service of the country.*

7 **(a) Definitions.** As used in this Code section, the term:

8 (1) "Deploying parent" means a natural or adoptive parent or a guardian of any child  
9 under the age of 18 whose parental rights or guardianship has not been terminated by a court of  
10 competent jurisdiction; who is a service member; and, who, in this capacity, is deployed or has  
11 been notified of impending deployment for a period of 30 or more days.

12 (2) "Service member" means a member of either:

13 (A) the Armed forces, which includes the National Guard and the reserve  
14 components of the armed forces, the United States Army, the United States Navy, the United  
15 States Marine Corps, the United States Coast Guard, and the United States Air Force, and any  
16 other branch of the military and naval forces or auxiliaries of the United States or the state; or

17 (B) the Noncombatant Uniformed Services, including the United States Public  
18 Health Service Commissioned Corps and National Oceanic and Atmospheric Administration  
19 Commissioned Corps.

20 (3) "Deployment" means service in compliance with official orders received by a service  
21 member to report for a combat operation, a contingency operation, a peacekeeping operation, a  
22 temporary duty assignment (TDY), a remote tour of duty, or other active service for which the  
23 deploying parent is required to report unaccompanied by any family member. [It also includes a  
24 mobilization or a call-up of a National Guard or Reserve service member to extended active duty  
25 status.] [It also] [Finally, it] includes a period during which a service member remains subject to

1 deployment orders and remains deployed on account of sickness, wounds, leave, or other lawful  
2 cause.

3 (4) "Temporary duty assignment" (TDY) means the temporary transfer of a service  
4 member from one service installation to a different location for a period usually less than 180  
5 days in order to accomplish training, assist in the performance of any military mission, or to  
6 receive medical treatment. Upon the completion of the temporary duty assignment, the service  
7 member is scheduled to return to his or her permanent duty location.

8 (5) "Nondeploying parent" means a parent or guardian not subject to deployment.

9 **(b) Custody Proceedings On The Deployment Of A Service Member.**

10 (1) *Temporary nature of and standard for custody order.* The court may, on motion of  
11 either parent, enter an order on custody or visitation either during the time a parent is deployed or  
12 in anticipation of deployment, on a showing that entry of the order is in the best interests of the  
13 child. Any order in anticipation of or during deployment shall be temporary in nature, and shall  
14 not permanently modify an existing custody or visitation order.

15 (2) *Provisions of custody order.* When entering a temporary order under this section, the  
16 court shall:

17 (A) specify the deployment that is the basis for the order and that the order  
18 entered is a temporary order;

19 (B) consider and provide for, if feasible, contact between the deploying parent  
20 and his or her child, including, but not limited to, electronic communication by webcam,  
21 telephone, or other available means;

22 (C) consider and direct, if feasible, that the nondeploying parent facilitate  
23 opportunities for telephonic and electronic mail contact between the deploying parent and the

1 child during the period of deployment;

2 (D) consider and provide for, if feasible, liberal time-sharing during the  
3 deploying parent's periods of leave from service.

4 (3) *Order for child support.* Where the court enters an order on custody or visitation  
5 under this section, it may also, on motion of either parent, consider and enter an order on the  
6 issue of child support.

7 (4) *Effect of prior agreement regarding deployment arrangements.* If the deploying  
8 parent and nondeploying parent have agreed in writing to provisions for custody or visitation of  
9 the child in the event of deployment, the court shall presume that the agreement is in the best  
10 interests of the child. This presumption may be overcome if the court makes specific findings of  
11 fact stating why the agreement is not in the best interests of the child.

12 (5) *Effect of order on jurisdiction under the Uniform Child Custody Jurisdiction and*  
13 *Enforcement Act.* Any order permitting removal of the child from this state in anticipation of or  
14 during deployment shall be denominated only as a temporary order; and any absence of the child  
15 from this state as a result of such an order shall be considered a "temporary absence" for the  
16 purposes of the Uniform Child Custody Jurisdiction and Enforcement Act. For the duration of  
17 the deployment, this state shall retain exclusive continuing jurisdiction under the Uniform Child  
18 Custody Jurisdiction Act; and the existence of a deployment may not be used as a basis to assert  
19 the inconvenience of this state as a forum. This provision shall not prevent the proper exercise of  
20 temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and  
21 Enforcement Act.

22 (6) *Expedited hearing.* When a deploying parent has received orders of deployment,  
23 upon motion of either parent, the court shall, upon reasonable notice (considered to be at least 72

1 hours), and for good cause shown, hold an expedited hearing on any custody or visitation matter  
2 instituted under this section where the imminent deployment of the parent will have a material  
3 effect on the parent's ability, or anticipated ability, to appear in person at a regularly scheduled  
4 hearing. At the expedited hearing, the court may also consider the issue of child support. The  
5 motion for such an expedited hearing shall include the date on which the deployment begins.

6 (7) *Electronic communications.* Upon motion of a deploying parent, the court shall,  
7 upon reasonable notice and for good cause shown, allow the parent to present testimony and  
8 evidence by electronic means in custody, visitation, and support matters instituted under this  
9 section where the deployment will have a material effect on the parent's ability to appear in  
10 person at a regularly scheduled hearing. The phrase “electronic means” includes communication  
11 by telephone, video teleconference, or the Internet.

12 (c) **Delegation of custody or visitation time.**

13 (1) *Order of delegation.* Upon the motion of the deploying parent or a family member of  
14 the deploying parent, and for the duration of the deployment, the court may delegate the service  
15 member’s custody or visitation rights, or a portion thereof, to a family member who has a close  
16 and substantial relationship to the minor child if this delegation is in the best interests of the  
17 child. A “close and substantial relationship” means one in which the deploying parent has  
18 established a bond between their child and the family member by visits or regular  
19 communications. Any such delegation shall not exceed the custody or visitation rights granted to  
20 the deploying parent under any existing permanent order, with the exception that the court may  
21 take into account atypical travel time required to transport the child between the nondeploying  
22 parent and the family member to whom custody or visitation rights are delegated.

23 (2) *Temporary and derivative nature of delegation ordered.* Neither this provision nor a

1 court order permitting delegation shall be deemed to create any permanent or separate rights to  
2 custody or visitation for any person to whom custody or visitation rights are delegated.

3 (3) *Standing to enforce delegation rights.* Once the court has delegated custody or  
4 visitation rights, the person to whom such rights are delegated shall have full legal standing to  
5 enforce these rights, including by a motion for contempt or any other means.

6 **(d) Resumption of custody arrangements following return of deploying parent.**

7 (1) *Termination of temporary custody order.* Any temporary custody order entered on  
8 deployment shall end no later than 30 days after the deploying parent returns from deployment,  
9 unless, on a motion from the nondeploying parent, the court finds that reversion to the previous  
10 custody arrangement is not in the best interest of the child. For purposes of the hearing, the  
11 nondeploying parent shall bear the burden of showing that restoration of the custody  
12 arrangement in effect before the deployment is not in the child's best interests.

13 (2) *Consideration of deployment in determining child's best interests.* In determining the  
14 best interests of the child, for purposes of this hearing, the fact of the deployment itself shall not  
15 be considered as a factor, although effects of the deployment aside from any temporary  
16 inconvenience caused to the child may be considered.

17 (3) *Expedited hearing.* Any motion by the nondeploying parent to prevent reversion to  
18 the previous custody arrangement that is filed within 30 days of the deploying parent's return  
19 shall be heard by the court on an expedited basis.

20 **(e) Changes in custody following return from deployment.**

21 (1) *Consideration of past deployment in determining child's best interests.* In any  
22 proceeding for modification of a custody decree or a petition for modification of a custody order  
23 that occurs subsequent to a deploying parent's return from deployment, the parent's deployment



1 itself shall not be considered as a factor in determining the child's best interests, although effects  
2 of the deployment aside from any temporary inconvenience caused to the child may be  
3 considered.

4        [(2) *Consideration of future deployment in determining child's best interests.* In any  
5 proceeding for modification of a decree or a petition for modification of a custody order that  
6 occurs subsequent to a deploying parent's return from deployment, the possibility of a parent's  
7 future deployment itself shall not be considered as a factor in determining the child's best  
8 interests, although effects of the deployment aside from any temporary inconvenience caused to  
9 the child may be considered.]

10        **(f) Permanent custody plan preceding deployment.** If either parent is a service  
11 member subject to possible deployment, any permanent child custody plan entered into between  
12 the parties must provide terms for custody and visitation in the event of deployment.