

(Slightly Updated) Memorandum

TO: NCCUSL Drafting Committee for the Uniform Custody and Visitation Act

CC: Observers

From: Maxine Eichner

Date: Feb. 17, 2011

This memorandum summarizes what I see as key issues for discussion at the Committee's upcoming February 2011 meeting. As usual, however, we will work line-by-line through the statute at the meeting to address any other issues you see. Note that this meeting will be the last time to resolve outstanding issues before the Act is considered for its first read this July. **Further note: The updated draft you are receiving incorporates changes that we just received from the Style Committee. Apologies for my getting them to you so soon before the meeting, but it seemed better for you to see a draft that incorporated its changes. This updated memorandum reflects the changes made in that draft.**

1. Throughout

The Style Committee asked us to remove the article divisions in the Act, because the Act is relatively short. We can ask it to rethink this if our committee thinks the article divisions add clarity. Be on the lookout as you read through the Act whether you think we should make this request.

2. Page 1, line 1: Title of the Act

The Act was titled "Visitation and Custody Issues Affecting Military Personnel and their Families," although at our last meeting we agreed to change the title to "Uniform Deployed

Parents Custody Act.” Before we request that the Executive Committee make this change, are we still in agreement about the new title?

3. Section 102(6): Definition of “Limited Contact”

At our September committee meeting, we decided that two different standards should apply to a judge’s delegation of the service member’s custody rights to a third party. A higher standard should apply to the judge’s delegation of custodial rights; a lower standard, meanwhile, would apply to a more limited delegation of rights. I have responded in the current version of the Act by introducing a definition of “limited contact,” which is meant to capture the more limited rights that could be awarded by the judge. The definition of “limited contact” is borrowed from Article 5, of the Hague Convention, which distinguishes between “rights of custody,” which it defines as “includ[ing] rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;” and “rights of access,” which it defines as “includ[ing] the right to take a child for a limited period of time to a place other than the child's habitual residence.” It is the latter definition that I have borrowed, renaming it “limited contact.” Note that the substantive provisions on delegation are now located in Article 3, and that I have changed the term “delegation” to “assignment.”

4. Section 201: Notice Required to Deploying Parent

At our September meeting, there was considerable discussion over what, exactly, should trigger the deploying parents’ duty to notify the nondeploying parent of deployment. With the help of the military observers, we need to nail this down at this meeting.

5. Section 208: Effect of Deployment on Jurisdiction

We spent a considerable time redrafting the language of this section at the last meeting. Please review the revised version here to be sure that I got it right. I have not yet run this version by Bob Spector, the reporter for the UCCJEA, but I will do so by our meeting. **Note: in the updated draft this was moved to the end of Article 2, and edited for me, both for clarity and to ensure that it balances the service member's interests against the child's. Please review my language carefully.**

6. Sections 301-05: Assignment of Custodial Responsibility

This article, which used to be named "Delegation of Custodial Responsibility," has been substantially redrafted in response to our last meeting. The committee decided that the Act needed clearly to reflect that in some circumstances the judge should be able to award temporary custodial responsibility to family members and to other persons with whom the child had a close relationship (such as the live-in partner of a service member). The committee also decided that the judge should be able to grant a more limited range of rights to these same persons in order to facilitate the continued relationship between the child and the service member; there should be a presumption in favor of awarding this more limited contact if the service member requested it. The committee needs to decide whether I have captured the distinction between an award of custodial responsibility and the more limited grant of "limited contact" correctly.

7. Section 401: Procedures for Terminating Temporary Custody

We had an extended discussion at our September meeting about the procedures for terminating the temporary custody order on the service member's return. The committee decided that I should check with a Clerk of Court to follow up on the committee's view that we should require a subsequent court order dissolving the temporary order. I spoke with the Clerk of Court of Orange County, North Carolina, who strongly agreed that a subsequent order should be entered to clarify custody. I have redrafted the section to do so, still trying to make it as easy on the returning service member as possible while safeguarding the interests of the child. The committee should review the procedures I set out here carefully, as well as the attached forms, which I'm assuming will go in the comments section of the Act. Similar to the order that Jim Higdon drafted at the last meeting, it was the Orange County Clerk's view that the easiest way to accomplish this would be to have a form that the service member could fill out that would both constitute a notice to the other parent that he or she was returning and wanted to regain custody and a motion to the court to terminate the temporary custody order, and which would further have a place where the other parent could sign consenting to the termination of custody. Section 401 sets out this model.

Please note that the form this section establishes notifies the nondeploying parent that they may object to the termination of the temporary order. At our last meeting there was discussion about whether the Act should require such notification to the nondeploying parent. Although there was some dissension, we decided that it should not. Because the procedure set out in this version provides a place for the nondeploying parent to consent, however, I was not comfortable with leaving out any notification of such a right. I therefore included a notification, but tried to

indicate that the right to object was limited to a narrow range of circumstances. The committee should decide whether I reached the right result.