

DRAFT
FOR DISCUSSION ONLY

VISITATION AND CUSTODY ISSUES AFFECTING MILITARY PERSONNEL AND THEIR FAMILIES

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For February 25 – 27, 2010 Drafting Committee Meeting

Without Prefatory Note or Comments

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February 3, 2011

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1 **UNIFORM DEPLOYED PARENTS CUSTODY ACT**

2 *An act to establish procedures to determine custodial responsibility when a service member with*
3 *children is deployed for military duty or otherwise called to service of the country.*

4
5 **[ARTICLE] 1**

6 **GENERAL PROVISIONS**

7
8 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Uniform Deployed
9 Parents Custody Act.

10 **SECTION 102. DEFINITIONS.** In this [act]:

11 (1) "Court" means an entity authorized under the law of a State to establish, enforce, or
12 modify a child-custody determination, and which has jurisdiction to do under the law of this
13 State.

14 (2) "Custodial responsibility" refers to legal custody, physical custody, or [visitation]
15 rights with respect to a child.

16 (3) "Deploying parent" means an individual:

17 (A) who is either

18 (i) the legal parent of an unemancipated child; or

19 (ii) the legal parent of an adult child for whom the parent has custodial
20 responsibility in common with a deploying parent under other laws of this state because of the
21 child's mental or physical disability; or

22 (iii) the legal guardian of an unemancipated child for whom custodial
23 responsibility has been determined by court order; and

24 (B) is a service member; and

1 (C) is deployed or has been notified of impending deployment.

2 (4) "Deployment" means the temporary transfer of a service member in compliance with
3 official orders to another location for a period of more than [60] days, during which family
4 members are not authorized to accompany the service member.

5 (5) "Limited contact" means the right to take a child for a limited period of time to a
6 place other than the child's habitual residence.

7 (6) "Nondeploying parent" means an individual:

8 (A) who is either

9 (i) the legal parent of an unemancipated child in common with a deploying
10 parent; or

11 (ii) the legal parent of an adult child for whom the parent has custodial
12 responsibility under other laws of this state because of mental or physical disability in common
13 with a deploying parent; or

14 (iii) or the legal guardian of an unemancipated child for whom custodial
15 responsibility has been determined by court order in common with a deploying parent; for the
16 purposes of this subsection, a court's assignment of the right to limited contact with a child under
17 this [article] shall not be considered an order of custodial responsibility; and

18 (B) who is not deployed and has not been notified of impending deployment.

19 (7) "Service member" means a member of:

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

22 (B) the Merchant Marine, the commissioned corps of the Public Health Service,
23 and the commissioned corps of the National Oceanic and Atmospheric Administration of the

1 United States; or

2 (C) the active or reserve components of the National Guard.

3 **SECTION 103. SANCTIONS.** If the court finds that any party to proceedings under
4 this [article] has acted in bad faith, or otherwise deliberately failed to comply with provisions in
5 this [article] or a court order issued under the authority of this [article], the court may assess
6 attorney's fees and court costs of the opposing party, as well as order any other appropriate
7 sanctions available under state law.

8 **SECTION 104. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
9 applying and construing this uniform act, consideration must be given to the need to promote
10 uniformity of the law with respect to its subject matter among states that enact it.

[ARTICLE] 2

1 **CUSTODY PROCEEDINGS UPON NOTICE OF DEPLOYMENT**

2
3 **SECTION 201. DEFINITIONS.** For the purposes of this [Article], the term “military
4 dependent benefits” means benefits available to the family members of uniformed service
5 benefits, including TRICARE, and other similar benefits provided by the service member’s
6 branch of service and federal regulations.

7 **SECTION 202. NOTICE REQUIRED TO NONDEPLOYING PARENT.** A
8 deploying parent shall notify the nondeploying parent of deployment within [] days of receiving
9 notice of deployment, unless an existing court order requires that the address or contact
10 information of the nondeploying parent not be disclosed. In the case of such a court order, the
11 notification shall be made to the court, which shall forward it to the nondeploying parent.
12 Violation of this section shall be considered by the court to be contrary to the best interests of the
13 child.

14 **SECTION 203. EXPEDITED HEARING.** Following a deploying parent’s receiving
15 notice of deployment, either parent may [move] [petition] the court for an expedited hearing on
16 any matter pertaining to custodial responsibility. The motion shall include the date on which the
17 deployment begins. Where the imminent deployment of the parent will have a material effect on
18 the parent's anticipated ability to appear in person at a regularly scheduled hearing, the court
19 shall schedule an expedited hearing.

20 **SECTION 204. ELECTRONIC TESTIMONY.** A deploying parent involved in
21 litigation pursuant to this [article] who is reasonably unavailable to appear personally may
22 request to participate in the hearing, including giving testimony and providing evidence, through
23 electronic means. Such a request shall be granted so long as such participation is technologically

1 and otherwise practicable, and would not create a substantial injustice.

2 **SECTION 205. EFFECT OF PRIOR JUDICIAL DECREE OR AGREEMENT.** In

3 any proceeding for entry of an order regarding custodial responsibility following notice of
4 deployment or during deployment:

5 (a) If a prior judicial decree between a deploying and nondeploying parent contains
6 provisions designating custodial responsibility of the child in the event of deployment, those
7 provisions are binding on the court unless: (1) a [material] [substantial] change of circumstances
8 has occurred that was not foreseeable at the time of the prior judicial decree; and (2) the court
9 makes specific findings of fact as to why enforcement of those provisions would not be in the
10 best interests of the child.

11 (b) If the deploying parent and nondeploying parent have previously agreed in writing to
12 provisions for custodial responsibility of the child in the event of deployment, the court shall
13 presume that the agreement is in the best interests of the child. This presumption may be rebutted
14 if the court makes specific findings of fact as to why enforcement of the agreement is not in the
15 best interests of the child.

16 **SECTION 206. TEMPORARY NATURE OF CUSTODY ORDER.** Following a
17 deploying parent's receiving notice of deployment and for the duration of the deployment:

18 (a) a court with jurisdiction may enter a temporary order for custodial responsibility under
19 applicable state law, so long as this order is in compliance with the Servicemembers Civil Relief
20 Act (50 U.S.C. Appx. §§ 521, 522);

21 (b) a court may not enter a permanent order regarding custody or visitation without the
22 deploying parent's consent.

23 **SECTION 207. PROVISIONS OF TEMPORARY CUSTODY ORDER.** When

1 entering a temporary order for custodial responsibility, the court shall:

2 (a) designate it as a temporary order;

3

4 (b) identify the nature of the deployment that is the basis for the order;

5 (c) specify the allocation of custodial responsibility between the deploying and

6 nondeploying parents, if applicable;

7 (d) specify the means by which the deploying parent may remain in contact with the

8 child, including by electronic communication, or other available means, and whether the

9 nondeploying parent is required to facilitate this communication;

10 (e) order liberal contact between the deploying parent and child consistent with the best

11 interests of the child during the time the deploying parent is on leave or is otherwise available;

12 (f) specify any assignment of custodial responsibility pursuant to [Article] 3, including

13 the specific powers that accompany this assignment;

14 (g) specify any assignment of limited contact to a third party pursuant to [Article] 3;

15 (h) if the order assigns custodial responsibility or limited contact to a third party, set out a

16 process to resolve any disputes that may arise between the nondeploying parent and the third

17 party;

18 (i) specify that the order shall terminate following the deploying parent's return from

19 deployment, as ordered by the court.

20 **SECTION 208. ORDER FOR CHILD SUPPORT.** Where the court enters an order

21 on custodial responsibility under this section, it may, on motion of a deploying or nondeploying

22 parent:

23 (a) enter a temporary order for child support consistent with the laws of this state; and

24 (b) require the deploying parent to enroll the child to receive military dependent benefits.

[ARTICLE] 3

JUDICIAL ASSIGNMENT OF CUSTODIAL RESPONSIBILITY.

SECTION 301. DEFINITIONS. For the purposes of this [Article]:

(a) A “close and substantial relationship” means one in which a bond has been forged between the child and a third party by regular contact or communications.

(b) A “family member” means a person who is a sibling, aunt, uncle, cousin, or grandparent related by blood, adoption, or marriage, or a stepparent to the child who is the subject of the proceedings. **This needs to be broader – Barbara?**

SECTION 302. ASSIGNMENT OF CUSTODIAL RESPONSIBILITY.

(a) Upon the motion of a deploying parent, the court may assign all or a portion of the deploying parent’s custodial responsibility to a third party who is an adult family member of the child or an adult with whom the child has a close and substantial relationship, if the assignment is in the best interests of the child and is otherwise consistent with the law of this state. The custodial responsibility assigned to the third party shall not exceed the amount of custodial time granted to the deploying parent under any existing permanent order or agreement between the parents, with the exception that the court may take into account atypical travel time required to transport the child between the nondeploying parent and the third party to whom custodial responsibility is assigned.

(b) There shall be a rebuttable presumption that custodial responsibility shall not be assigned to an individual who has committed an act or acts of domestic violence against a spouse, a child, or a domestic living partner, or to an individual with a person in the household who has committed an act or acts of domestic violence against a spouse, a child, or a domestic living partner.

1 (c) In assigning custodial responsibility to a third party, the court may assign any of the
2 deploying parent’s powers regarding care, custody, or property of the minor or ward, including
3 decisional authority.

4 **SECTION 303. ASSIGNMENT OF LIMITED CONTACT.**

5 (a) Upon the motion of a deploying parent, the court may order limited contact between
6 the child and a third party who is either a family member of the child or a person with whom the
7 child has a close and substantial relationship, if allowing such contact is in the best interest of the
8 child and is otherwise consistent with the law of this state. Except as provided in subsection (c),
9 the court shall presume that assigning such limited contact is in the best interests of the child.
10 This presumption may be rebutted if the court makes specific findings of fact as to why such
11 contact is not in the child’s best interests.

12 (b) The amount of limited contact assigned shall not exceed the amount of custodial time
13 granted to the deploying parent under any existing permanent order or agreement between the
14 parents, with the exception that the court may take into account atypical travel time required to
15 transport the child between the nondeploying parent and the third party to whom limited access
16 rights are assigned.

17 (c) There shall be a rebuttable presumption that limited contact shall not be granted to an
18 individual who has committed an act or acts of domestic violence against a spouse, a child, or a
19 domestic living partner, or to an individual with a person in the household who has committed an
20 act or acts of domestic violence against a spouse, a child, or a domestic living partner.

21 **SECTION 304. NATURE OF ASSIGNED RIGHTS.** The custodial responsibility and
22 limited contact ordered under this article derive from the deploying parent’s own right to
23 custodial responsibility. Neither this [article] nor a court order permitting assignment shall be

1 deemed to create any separate or permanent rights to custodial responsibility or limited access in
2 the person to whom they are assigned.

3 **SECTION 305. STANDING TO ENFORCE ASSIGNED RIGHTS.** Once the court
4 has assigned custodial responsibility or limited contact to a third party, that party shall have legal
5 standing to enforce the court’s order, so long as the deploying parent has not revoked consent to
6 the assignment.

7 **SECTION 306. TERMINATION OF ASSIGNED RIGHTS.** On the motion of a
8 deploying parent, the court may modify or terminate the assignment of custodial responsibility or
9 limited contact on a showing that such modification or termination is consistent with the best
10 interests of the child and the law of this State.

[ARTICLE] 4

1 **PROCEDURES FOLLOWING RETURN FROM DEPLOYMENT**

2 **SECTION 401. PROCEDURES FOR TERMINATING TEMPORARY CUSTODY**
3 **ORDER.**

4 (a) On or following return from deployment, a deploying parent who seeks to terminate a
5 temporary order of custodial responsibility entered pursuant to this [article] shall file with the
6 court a Notice of Return and Motion to Terminate Temporary Custody Order (“Notice of
7 Return”). The Notice of Return shall inform the court of the date that the deploying parent seeks
8 the temporary order be terminated, which shall be at least [30] days from the date the Notice of
9 Return is filed. A copy of the Notice of Return shall be sent to the nondeploying parent unless
10 an existing court order requires that the address or contact information of the nondeploying
11 parent not be disclosed. In the case of such a court order, or if the deploying parent is unable to
12 locate the nondeploying parent, the notification shall be made to the court only, which shall
13 forward it to the nondeploying parent.

14 (b) The end of the Notice of Return, below the deploying parent’s signature line, shall
15 contain a paragraph in boldface type stating “I, the undersigned, being first duly sworn, say that I
16 am a parent or guardian of the child in this matter; that I have read the Notice of Return and
17 Motion to Terminate Temporary Custody Order and understand its contents; I further
18 understand that the court will dissolve the temporary order of custody on the date set out in the
19 above Motion to Terminate Temporary Custody unless doing so would be likely to cause the
20 child substantial harm, and that I may object to the Motion to Terminate Temporary Custody for
21 this reason and only for this reason; understanding all these things, I consent to this motion and
22 to the termination of the temporary custody order.” The paragraph should be followed by a

1 signature line where the nondeploying parent may sign and verify in the presence of a notary
2 public.

3 (c) A nondeploying parent who signs and verifies this certification shall forward the form
4 to the court with a copy to the deploying parent within [30] days of the deploying parent's filing
5 of the Notice of Return. On receipt of the signed and verified certification, the court shall treat
6 the Motion to Terminate Temporary Custody Order as consented to by the nondeploying parent,
7 and shall resolve the motion accordingly on an expedited basis.

8 (d) If the nondeploying parent does not sign and return the certification within [30] days
9 of its filing by the deploying parent, and no opposition to the termination of the temporary
10 custody order has been filed with the court by the nondeploying parent within that period of
11 time, the court shall treat the Motion to Terminate Temporary Custody Order as unopposed, and
12 shall resolve the motion accordingly on an expedited basis.

13 (e) If the nondeploying parent or a third party with temporary custodial responsibility
14 files an objection to vacating the temporary custody order within [30] days of the filing of the
15 Notice of Return, or the court otherwise requires a hearing on the deploying parent's motion to
16 terminate the temporary custody order, the issue shall be heard by the court in an expedited
17 hearing within [] days.

18 **SECTION 402. STANDARD FOR VACATING TEMPORARY CUSTODY**
19 **ORDER.**

20 (a) Unless the court finds that termination of the temporary order for custodial
21 responsibility issued pursuant to this [act] is likely to cause the child substantial harm, the court
22 shall vacate the temporary custody order.

23 (b) If the court finds that vacating the temporary order would be likely to cause the child

1 substantial harm, it shall order that the temporary order remain in effect until a hearing can be
2 held on the issue of a permanent change of custodial responsibility. A hearing on a permanent
3 change of custodial responsibility must be held within [30] days from the date of the court's
4 order extending the temporary order, unless the deploying parent consents to a longer period of
5 time.

6 (c) A court shall not find that vacating the custody order would be likely to cause the
7 child substantial harm where such harm can be prevented through a gradual reversion to the
8 previous custody arrangement. In such a case, the court shall order a transition period that
9 allows a gradual reversion to the previous arrangement of custodial responsibility rather than
10 retain the temporary order.

11 **SECTION 403. TRANSITION TO PRIOR CUSTODIAL ARRANGMENT.** As
12 soon as practicable following return from deployment, a deploying parent shall seek to discuss
13 with the nondeploying parent or any third party with temporary custodial responsibility any
14 transition needed to resume the prior custodial arrangement unless a court order prohibits contact
15 between these persons.

16 **SECTION 404. VISITATION PRIOR TO TERMINATION OF TEMPORARY**
17 **ORDER.** Following the return from deployment, a nondeploying parent or third party to whom
18 temporary custodial responsibility has been assigned under this [article] shall provide for
19 reasonable access to the child by the deploying parent until the time that the temporary order is
20 terminated or a court with jurisdiction enters an order on custodial responsibility. Reasonable
21 access is not required in the event that such access is likely to cause the child substantial harm.

ARTICLE 5

**CONSIDERATION OF DEPLOYMENT IN CUSTODY PROCEEDINGS WHEN NO
DEPLOYMENT IS PENDING**

**SECTION 501. CONSIDERATION OF PAST OR FUTURE DEPLOYMENTS IN
CUSTODY PROCEEDINGS.** In any proceeding for custodial responsibility of a child of a service member, whether it be an original proceeding for custody or the modification of a previous custody order, the past deployment or possible future deployment of the service member shall not be considered as a factor in determining the child’s best interests. However, the material effects of the deployment on the child may be considered. This section does not apply to proceedings for a temporary order of custodial responsibility under Article 2 of this Act.

**SECTION 502. CONSIDERATION OF PARENT’S SERVICE IN CUSTODY
PROCEEDINGS.** In any proceeding for custodial responsibility of a child of a service member, whether it be an original proceeding for custody or the modification of a previous custody order, other than proceedings for a temporary order of custodial responsibility under [Article] 2 of this Act, the court shall consider the positive effects the child of having a parent in military service, including the opportunity to live in diverse places and the availability of healthcare to children of service members.

SECTION 503. EFFECT OF DEPLOYMENT ON JURISDICTION. If this state had exclusive continuing jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act [] at the time of the deployment, it shall retain this jurisdiction for the duration of deployment. The removal of a child from this state following the receipt of an order of deployment or during deployment shall be considered a “temporary absence” for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act, []. Further, the courts of this

1 State shall treat the removal of the child from another state to this state following the receipt of
2 an order of deployment or during deployment as a “temporary absence” from the other state for
3 the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act. This section shall
4 not prevent the exercise of temporary emergency jurisdiction by a court of this state under the
5 Uniform Child Custody Jurisdiction and Enforcement Act [].