

UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

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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 during deployment are complicated by variance among the law of different states. Issues of child custody and visitation are generally the province of state law. Because of the mobile nature of national 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, large differences exist among state laws applied to custody 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 significantly. 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 2012 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 past or future deployment 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 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. One section of this article sets out procedures that apply to the termination of a temporary custody arrangement that had been established through an agreement. Another section applies when the parents mutually agree that a temporary custody order that had been entered by a court should be terminated. In the event that the parents do not reach agreement regarding termination of a temporary custody arrangement established by court order, a third section establishes that the custody arrangement will terminate automatically in a specified number of days after the deploying parent gives notice to the other parent of return from deployment. Finally, Article 5 contains an effective date provision, a transition provision, and boilerplate provisions common to all uniform acts.

The Problem of Differing Terminology

The UDPCVA seeks to establish 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. States, however, currently differ on the terminology that they use to describe issues of custody and visitation. In enacting the UDPCVA, states are encouraged to add any state-specific 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.

Relationship with Other State Law

The UDPCVA sets out procedures and substantive rules that apply specifically to custody situations involving the deployment of a service member. It is intended that, in resolving issues pursuant to the UDPCVA, courts will supplement the Act's provisions with the general custody law of the state. For example, where state law would give a child's preferences significant weight in a custody determination, significant weight should also be given to a child's preferences in a temporary custody determination pursuant to this Act. Similarly, where a state statute permits the shifting of attorneys' fees between parents in custody cases, a court may apply that statute in custody determinations under this Act.

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 has attained [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. The term includes 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 a court order concerning custodial responsibility.

(4) “Court” means a tribunal [, including an administrative agency,] authorized under law of this state other than this [act] to make, enforce, or modify a decision regarding custodial responsibility.

(5) “Custodial responsibility” includes all powers and duties relating to caretaking authority and decision-making authority for a child. The term includes physical custody, legal custody, parenting time, right to access, visitation, and authority to grant limited contact with a child.

(6) “Decision-making authority” means the power to make important decisions regarding a child, including decisions regarding the child’s education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that

necessarily accompany a grant of caretaking authority.

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

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

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

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

(A) are designated as unaccompanied;

(B) do not authorize dependent travel; or

(C) otherwise do not permit the movement of family members to the location to which the service member is deployed.

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

(10) “Limited contact” means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the residence of the child.

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

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

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

(B) an individual who has custodial responsibility for a child under law of this state other than this [act].

(13) “Record” means information that is inscribed on a tangible medium or that is stored

in an electronic or other medium and is retrievable in perceivable form.

(14) “Return from deployment” means the conclusion of a service member’s deployment as specified in uniformed service orders.

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

(16) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

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

(18) “Uniformed service” means:

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

(B) the United States Merchant Marine;

(C) the commissioned corps of the United States Public Health Service;

(D) the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(E) the National Guard of a state.

Comment

The UDPCVA establishes one umbrella term, “custodial responsibility,” for all issues relating to custody, including the responsibility often referred to in other state custody law as physical custody, visitation, and legal custody. The Act also establishes three sub-categories of custodial responsibility that can be transferred to others during deployment: “caretaking authority,” “decision-making authority,” and “limited contact.” The terminology used for each of these sub-categories is original to the UDPCVA. The term “caretaking authority” is meant to encompass the authority to live with, spend time with, or visit with a child. States often use a number of terms that fall within this definition, including “primary physical custody,”

“secondary physical custody,” “visitation,” and “possessory conservatorship.” All these are meant to be subsumed under the term “caretaking authority.”

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

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

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

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

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

SECTION 103. REMEDIES FOR NONCOMPLIANCE. In addition to other remedies under law of this state other than this [act], if a court finds that a party to a proceeding under this [act] has acted in bad faith or intentionally failed to comply with this [act] or a court

order issued under this [act], the court may assess reasonable attorney's fees and costs against the party and order other appropriate relief.

SECTION 104. JURISDICTION.

(a) A court may issue an order regarding custodial responsibility under this [act] only if the court has jurisdiction under [the Uniform Child Custody Jurisdiction and Enforcement Act].

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

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

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

(e) This section does not prevent a court from exercising temporary emergency jurisdiction under [the Uniform Child Custody Jurisdiction and Enforcement Act].

Comment

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

Second, the section provides that once either the court has entered a temporary order for custodial responsibility on account of a service member's deployment, or the parties have entered into a temporary agreement for custody during deployment that alters a permanent

custody order, for purposes of the UCCJEA's exclusive, continuing jurisdiction provision, the deploying parent's residence will not be changed on account of the deployment itself. This section is not intended to prohibit the court from using other indicia of change of residence of the deployed parent aside from the deployment itself, including buying or selling a home, or changing voter registration, that would ordinarily be considered in determining residence under the UCCJEA.

SECTION 105. NOTIFICATION REQUIRED OF DEPLOYING PARENT.

(a) Except as otherwise provided in subsection (d) and subject to subsection (c), a deploying parent shall notify in a record the other parent of a pending deployment not later than [seven] days after receiving notice of deployment unless reasonably prevented from doing so by the circumstances of service. If the circumstances of service prevent giving notification within the [seven] days, the deploying parent shall give the notification as soon as reasonably possible.

(b) Except as otherwise provided in subsection (d) and subject to subsection (c), each parent shall provide in a record the other parent with a plan for fulfilling that parent's share of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after notification of deployment is given under subsection (a).

(c) If a court order currently in effect prohibits disclosure of the address or contact information of the other parent, notification of deployment under subsection (a), or notification of a plan for custodial responsibility during deployment under subsection (b), may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

(d) Notification in a record under subsection (a) or (b) is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.

(e) In a proceeding regarding custodial responsibility, a court may consider the reasonableness of a parent's efforts to comply with this section.

Comment

As suggested in the Comment to Section 102, the term “notice of deployment” is intended to be construed broadly to encourage parents to communicate as soon as possible after a service member learns of deployment. This notice need not be pursuant to the issuance of official orders. It is intended to include a service member having been advised by the commanding officer or a designated representative that a determination of deployment has been made and that orders of deployment will be issued. Furthermore, notice of deployment should be construed as given where the commanding officer or a designated representative has informed the service member that there is a reasonable possibility that the service member or the service member’s unit will be deployed in the next few months.

The requirement in subsection (b) that plans regarding custodial responsibility during deployment be communicated to the other parent applies not only to family care plans developed by service members, but to any other plan for custodial responsibility during deployment formulated by either parent.

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

SECTION 106. DUTY TO NOTIFY OF CHANGE OF ADDRESS.

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

(b) If a court order currently in effect prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a notification under subsection (a) may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.

SECTION 107. GENERAL CONSIDERATION IN CUSTODY PROCEEDING OF PARENT’S MILITARY SERVICE. In a proceeding for custodial responsibility of a child of a service member, a court may not consider a parent’s past deployment or possible future

deployment in itself in determining the best interest of the child but may consider any significant impact on the best interest of the child of the parent's past or possible future deployment.

Legislative Note: *The state may consider including this section as part of its general custody laws.*

Comment

[Section] 107, in contrast to later articles of the Act, does not directly concern custody procedures in conjunction with a service members' deployment. Instead, it seeks to amend the state's general standard for child custody to guard against the possibility that courts will use past or possible future deployment as a negative factor in determining custody by service members without serious consideration of whether the child's best interest was or would be truly compromised by such deployment.

This section prohibits the court from using a parent's past deployment or possible future deployment itself as a negative factor in determining the best interests of the child. However, the significant effects on the child of the parent's past or possible future service may be considered. The term "significant" is meant to exclude the court's considering trivial impact of a parent's deployment, such as the need to enroll a child in a different school. Under this standard, the court may only consider impacts that are material or substantial. For example, the court may consider that the child has bonded closely with step-siblings while in a temporary custody arrangement during a deployment, or that the child does not adjust well to new situations and therefore will likely have difficulty relocating if a parent is deployed in the future.

[ARTICLE] 2

AGREEMENT ADDRESSING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

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

SECTION 201. FORM OF AGREEMENT.

(a) The parents of a child may enter into a temporary agreement under this [article] granting custodial responsibility during deployment.

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

(1) in writing; and

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

(c) Subject to subsection (d), an agreement under subsection (a), if feasible, must:

(1) identify the destination, duration, and conditions of the deployment that is the basis for the agreement;

(2) specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent;

(3) specify any decision-making authority that accompanies a grant of caretaking authority;

(4) specify any grant of limited contact to a nonparent;

(5) if under the agreement custodial responsibility is shared by the other parent and a nonparent, or by other nonparents, provide a process to resolve any dispute that may arise;

(6) specify the frequency, duration, and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact, and the allocation of any costs of contact;

(7) specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;

(8) acknowledge that any party's child-support obligation cannot be modified by the agreement, and that changing the terms of the obligation during deployment requires modification in the appropriate court;

(9) provide that the agreement will terminate according to the procedures under [Article] 4 after the deploying parent returns from deployment; and

(10) if the agreement must be filed pursuant to Section 205, specify which parent

is required to file the agreement.

(d) The omission of any of the items specified in subsection (c) does not invalidate an agreement under this section.

SECTION 202. NATURE OF AUTHORITY CREATED BY AGREEMENT.

(a) An agreement under this [article] is temporary and terminates pursuant to [Article] 4 after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under Section 203. The agreement does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom custodial responsibility is given.

(b) A nonparent who has caretaking authority, decision-making authority, or limited contact by an agreement under this [article] has standing to enforce the agreement until it has been terminated by court order, by modification under Section 203, or under [Article] 4.

SECTION 203. MODIFICATION OF AGREEMENT.

(a) By mutual consent, the parents of a child may modify an agreement regarding custodial responsibility made pursuant to this [article].

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

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

Comment

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

SECTION 204. POWER OF ATTORNEY. A deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state other than this [act], or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power.

Comment

In addition to this section, there may be legal procedures outside of the UDPCVA through which a deploying parent may execute a power of attorney, including 10 U.S.C. § 1044B.

SECTION 205. FILING AGREEMENT OR POWER OF ATTORNEY WITH COURT. An agreement or power of attorney under this [article] must be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect concerning the child who is the subject of the agreement or power. The case number and heading of the pending case concerning custodial responsibility or child support must be provided to the court with the agreement or power.

[ARTICLE] 3

JUDICIAL PROCEDURE FOR GRANTING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

Comment

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

SECTION 301. DEFINITION. In this [article], “close and substantial relationship” means a relationship in which a significant bond exists between a child and a nonparent.

SECTION 302. PROCEEDING FOR TEMPORARY CUSTODY ORDER.

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

(b) At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility of a child during deployment. The motion must be filed in a pending proceeding for custodial responsibility in a court with jurisdiction under Section 104 or, if there is no pending proceeding in a court with jurisdiction under Section 104, in a new action for granting custodial responsibility during deployment.

SECTION 303. EXPEDITED HEARING. If a motion to grant custodial responsibility is filed under Section 302(b) before a deploying parent deploys, the court shall conduct an expedited hearing.

SECTION 304. TESTIMONY BY ELECTRONIC MEANS. In a proceeding under this [article], a party or witness who is not reasonably available to appear personally may appear, provide testimony, and present evidence by electronic means unless the court finds good cause to require a personal appearance.

SECTION 305. EFFECT OF PRIOR JUDICIAL ORDER OR AGREEMENT. In a proceeding for a grant of custodial responsibility pursuant to this [article], the following rules apply:

(1) A prior judicial order designating custodial responsibility in the event of deployment

is binding on the court unless the circumstances meet the requirements of law of this state other than this [act] for modifying a judicial order regarding custodial responsibility.

(2) The court shall enforce a prior written agreement between the parents for designating custodial responsibility in the event of deployment, including an agreement executed under [Article] 2, unless the court finds that the agreement is contrary to the best interest of the child.

Comment

Section 305 governs the court's consideration of a past judicial decree or agreement between the parents that specifically contemplates custody during a service member's deployment. In crafting this provision, the UDPCVA seeks to give significant deference to past decrees and agreements in which issues of custody during deployment have already been considered and resolved. At the same time, it seeks to balance the value of certainty gained by leaving settled matters settled against the recognition that in some circumstances past determinations may no longer be in the best interest of the child.

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

SECTION 306. GRANT OF CARETAKING OR DECISION-MAKING

AUTHORITY TO NONPARENT.

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

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

(1) the amount of time granted to the deploying parent under a permanent custody

order, but the court may add unusual travel time necessary to transport the child; or

(2) in the absence of a permanent custody order that is currently in effect, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, but the court may add unusual travel time necessary to transport the child.

(c) A court may grant part of a deploying parent's decision-making authority, if the deploying parent is unable to exercise that authority, to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship. If a court grants the authority to a nonparent, the court shall specify the decision-making powers granted, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel.

Comment

Section 306 allows the court, at the request of a deploying parent, to grant the service member's portion of custodial responsibility in the form of caretaking authority to an adult nonparent who is either a family member or with whom the child has a close and substantial relationship. The UDPCVA establishes no presumption for a grant of custodial responsibility between such a nonparent and the child's other parent. Instead, the court is directed to make the decision based on the best interest of the child. This standard accords with the view that such a grant of custody constitutes a delegation of the service member's custodial rights, and is within the rights of a custodial parent. At the time of drafting of the UDPCVA, courts that had considered the issue of whether deployed parents could delegate their custodial rights to a nonparent had determined that such delegation did not constitute an award of custody to a nonparent that would violate the other parents' constitutional rights to custody in their children. If courts in a state reached a contrary result based either on the state or federal constitution, this determination would be incorporated into section 306 through subsection (a)'s requirement that a grant of custodial responsibility be "in accordance with law of this state other than this [act]." The result would be that a court could grant custody to a nonparent under section 306 only where an exception applied to the constitutional rule of custody in a parent and such a grant was in the best interest of the child.

Subsection (a)'s requirement that a grant of custodial responsibility be "in accordance with law of this state other than this [act]" is also intended to incorporate other relevant custody law in the state. For example, it is expected that the court will incorporate presumptions in other state law against granting custodial responsibility to perpetrators of domestic violence or to sexual offenders, or to those who reside with them.

While Section 306 provides that a grant of caretaking authority to a nonparent should generally be limited to the amount of time that the deploying parent previously exercised

caretaking authority over the child, the court may vary this because of the practicalities of travel relating to the temporary custody arrangement. For example, if a service member ordinarily visited the child on Sundays, the court's grant of this same custody schedule to the service member's parents would be impracticable if the child needed to travel by bus or plane to visit the parents. In such a situation, the court might, for example, add the time for the child's travel to allow the grandparents a full day with the child.

This section also allows the court to grant some portion of the service member's authority to make important decisions for a child to a nonparent when a service member is deployed overseas and may not be available to make these decisions. Most states presume that some day-to-day decision making authority automatically accompanies a court's grant of caretaking authority of a child. Section 306 allows the court to grant some of the decision making responsibility ordinarily considered to be part of legal custody, including the ability to enroll the child in a local school, to direct religious training, deal with health care, to enroll the child in extracurricular activities, and to authorize the child to travel.

Because Article 3 allows the court to grant to a nonparent only authority that a service member already possesses, the court may not grant decision-making authority where the service member has no legal custody rights. Furthermore, Section 306 contemplates that the court ordinarily will not grant all the decision-making authority that generally accompanies legal custody, such as the authority to give a minor permission to marry, or choosing the child's religion. Because these decisions are generally not time-sensitive, it is expected that they will generally remain with the parent who permanently holds custody, even during deployment.

SECTION 307. GRANT OF LIMITED CONTACT. On motion of a deploying parent, and in accordance with law of this state other than this [act], unless the court finds that the contact would be contrary to the best interest of the child, a court shall grant limited contact to a nonparent who is a family member of the child or an individual with whom the child has a close and substantial relationship.

Comment

Because allowing the child contact with a person close to the deploying parent is a means through which the service member can seek to ensure a continuing bond with the child, the UDPCVA sets out a rebuttable presumption that such limited contact is in the best interest of the child. As discussed in the Comment to Section 306, the requirement that a grant of limited contact be "in accordance with law of this state other than this [act]" would incorporate any relevant state or federal constitutional law, as well as other state law relating to custody determinations.

SECTION 308. NATURE OF AUTHORITY CREATED BY TEMPORARY CUSTODY ORDER.

(a) A grant of authority under this [article] is temporary and terminates under [Article] 4 after the return from deployment of the deploying parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom it is granted.

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

SECTION 309. CONTENT OF TEMPORARY CUSTODY ORDER.

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

- (1) designate the order as temporary; and
- (2) identify to the extent feasible the destination, duration, and conditions of the deployment.

(b) If applicable, an order for custodial responsibility under this [article] must:

- (1) specify the allocation of caretaking authority, decision-making authority, or limited contact among the deploying parent, the other parent, and any nonparent;
- (2) if the order divides caretaking or decision-making authority between individuals, or grants caretaking authority to one individual and limited contact to another, provide a process to resolve any dispute that may arise;
- (3) provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications;

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

(5) provide for reasonable contact between the deploying parent and the child after return from deployment until the temporary order is terminated, even if the time of contact exceeds the time the deploying parent spent with the child before entry of the temporary order; and

(6) provide that the order will terminate pursuant to [Article] 4 after the deploying parent returns from deployment.

SECTION 310. ORDER FOR CHILD SUPPORT. If a court has issued an order granting caretaking authority under this [article], or an agreement granting caretaking authority has been executed under [Article] 2, the court may enter a temporary order for child support consistent with law of this state other than this [act] if the court has jurisdiction under [the Uniform Interstate Family Support Act].

Comment

Section 310 recognizes that a change of custody during deployment will in many instances require adjustment in child support, as a service member who normally is a custodial parent now will appropriately pay support to the other parent or a nonparent with custody of the child. Accordingly, this section provides that a court determining caretaking authority during deployment may also enter a temporary order for child support if, based on underlying state law, it would have jurisdiction to enter such an order.

SECTION 311. MODIFYING OR TERMINATING GRANT OF CUSTODIAL RESPONSIBILITY TO NONPARENT.

(a) Except for an order under Section 305, except as otherwise provided in subsection (b), and consistent with the Servicemembers Civil Relief Act, 50 U.S.C. Appendix Sections 521 and 522, on motion of a deploying or other parent or any nonparent to whom caretaking authority, decision-making authority, or limited contact has been granted, the court may modify or

terminate the grant if the modification or termination is consistent with this [article] and it is in the best interest of the child. A modification is temporary and terminates pursuant to [Article] 4 after the deploying parent returns from deployment, unless the grant has been terminated before that time by court order.

(b) On motion of a deploying parent, the court shall terminate a grant of limited contact.

Comment

Section 311 provides that a court may modify temporary orders and agreements concerning custodial responsibility during deployment if it is in the best interest of the child. This standard is easier to meet than the standards for modifying custody generally used in most states in that it does not require that the court find a substantial or material change of facts before modifying custody.

The UDPCVA makes termination of limited contact on a motion from the deploying parent mandatory by the court, rather than directs the court to conduct an inquiry concerning the child's best interests. The UDPCVA takes the position that because limited contact is intended to further the deploying parent's relationship with the child, it should be solely within the deploying parent's discretion to terminate this contact.

[ARTICLE] 4

RETURN FROM DEPLOYMENT

Comment

Article 4 sets out procedures governing the termination of the temporary custody arrangement following the service member's return from deployment. In doing so, the UDPCVA seeks to balance the service member's interest in quickly and easily reestablishing custody against the possibility that resumption of custody may no longer be in the child's best interest because of changes in the child's or service member's situation. Concerns about the child's best interest resulted in rejection in the UDPCVA of an immediate, automatic reversion to the previous custody order following the service member's return. Instead, the Act provides for automatic reversion after [60] days in the absence of an agreement among the parents; the purpose of the time lag is to enable the other parent to contest reversion of custody under other state law if that parent believes it is not in the best interest of the child.

The Article sets out three alternative procedures for termination of the temporary custody arrangement. Section 401 sets out a procedure for terminating a temporary custody arrangement established by an agreement. Section 402 sets out a consent procedure for terminating a temporary custody arrangement established by court order. When no agreement to terminate a temporary custody order is reached between the parents, Section 404 provides for automatic termination of the custody order in [60] days.

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

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

(b) A temporary agreement under [Article] 2 granting custodial responsibility terminates:

(1) if an agreement to terminate under subsection (a) specifies a date for termination, on that date; or

(2) if the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by the deploying parent and the other parent.

(c) In the absence of an agreement under subsection (a) to terminate, a temporary agreement granting custodial responsibility terminates under [Article] 2 [60] days after the deploying parent gives notice to the other parent that the deploying parent returned from deployment.

(d) If a temporary agreement granting custodial responsibility was filed with a court pursuant to Section 205, an agreement to terminate the temporary agreement also must be filed with that court within a reasonable time after the signing of the agreement. The case number and heading of the case concerning custodial responsibility or child support must be provided to the court with the agreement to terminate.

SECTION 402. CONSENT PROCEDURE FOR TERMINATING TEMPORARY GRANT OF CUSTODIAL RESPONSIBILITY ESTABLISHED BY COURT ORDER. At any time after a deploying parent returns from deployment, the deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility issued under [Article] 3. After an agreement has been filed, the court shall issue

an order terminating the temporary order effective on the date specified in the agreement. If a date is not specified, the order is effective immediately.

Comment

The agreement may declare that the temporary order terminates on any date, including a date after [60] days following the deploying parent's return from deployment. The filing of such an agreement/stipulation would mean that section 404's termination provision would not terminate the temporary order by operation of law.

SECTION 403. VISITATION BEFORE TERMINATION OF TEMPORARY GRANT OF CUSTODIAL RESPONSIBILITY. After a deploying parent returns from deployment until a temporary agreement or order for custodial responsibility established under [Article] 2 or 3 is terminated, the court shall issue a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interest of the child, even if the time of contact exceeds the time the deploying parent spent with the child before deployment.

SECTION 404. TERMINATION BY OPERATION OF LAW OF TEMPORARY GRANT OF CUSTODIAL RESPONSIBILITY ESTABLISHED BY COURT ORDER.

(a) If an agreement between the parties to terminate a temporary order for custodial responsibility under [Article] 3 has not been filed, the order terminates [60] days after the deploying parent gives notice to the other parent and any nonparent granted custodial responsibility that the deploying parent has returned from deployment.

(b) A proceeding seeking to prevent termination of a temporary order for custodial responsibility is governed by law of this state other than this [act].

[ARTICLE] 5

MISCELLANEOUS PROVISIONS

SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote

uniformity of the law with respect to its subject matter among states that enact it.

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

SECTION 503. SAVINGS CLAUSE. This [act] does not affect the validity of a temporary court order concerning custodial responsibility during deployment which was entered before [the effective date of this [act]].

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