

DRAFT
FOR DISCUSSION ONLY

VISITATION AND CUSTODY ISSUES AFFECTING MILITARY PERSONNEL AND THEIR FAMILIES

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For September 24 – 26, 2010 Drafting Committee Meeting

Without Prefatory Note or Comments

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September 13, 2010

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1 **MILITARY VISITATION AND CUSTODY ACT**

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

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

5
6 **[ARTICLE] 1**

7 **GENERAL PROVISIONS**

8
9 **SECTION 101. SHORT TITLE.** This [Act] may be cited as the Uniform Military
10 Custody and Visitation Act.

11 **SECTION 102. DEFINITIONS.** In this [Act]:

12 (1) "Custodial responsibility" refers to legal custody, physical custody, or visitation
13 rights with respect to a child.

14 (2) "Deploying parent" means:

15 (A) a legal parent of any child under the age of 18, or the legal parent of any child
16 who has reached the age of majority but is physically or mentally incapacitated from supporting
17 himself, or the guardian of any person;

18 (B) who is a service member; and

19 (C) who, in this capacity, is deployed or has been notified of impending
20 deployment.

21 (3) "Deployment" means the temporary transfer of a service member in compliance with
22 official orders to another location in support of combat or some other operation for a period of
23 more than 30 days, during which family members are not authorized to accompany the service
24 member at government expense.

1 (4) "Guardian" means a person who has qualified as a guardian of a minor or
2 incapacitated adult pursuant to appointment by a court. The term includes a limited guardian but
3 not a guardian ad litem.

4 (5) "Nondeploying parent" means a legal parent or guardian who is not deployed who
5 has a child or ward in common with a deploying parent.

6 (6) "Service member" means a member of either:

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

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

13 (C) the active or reserve components of the National Guard or state militia units.

14 (7) "Visitation" means the right to take a child for a limited period of time to a place
15 other than the child's habitual residence.

16 **SECTION 103. REQUIREMENT TO PLAN FOR DEPLOYMENT.** In an original
17 custody proceeding within the jurisdiction of a court of this State, if either parent is a service
18 member subject to possible deployment, the court shall provide for the terms of custodial
19 responsibility in the event of deployment.

20 **SECTION 104. CONSIDERATION OF PAST OR FUTURE DEPLOYMENTS IN**
21 **CUSTODY PROCEEDINGS.** In any proceeding for custodial responsibility of a child of a
22 service member, whether it be an original proceeding for custody or the modification of a
23 previous custody order, past deployments or possible future deployments of the service member

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

3 This section does not apply to proceedings for a temporary order of custodial responsibility.

4 **SECTION 105. EFFECT OF DEPLOYMENT ON JURISDICTION.** The removal

5 of a child from this state in anticipation of or during deployment shall be considered a

6 “temporary absence” for the purposes of the Uniform Child Custody Jurisdiction and

7 Enforcement Act, []. If this state had exclusive continuing jurisdiction under the Uniform Child

8 Custody Jurisdiction and Enforcement Act at the time of the deployment, it shall retain this

9 jurisdiction for the duration of deployment; and the existence of a deployment may not be used

10 as a basis to assert the inconvenience of this state as a forum or otherwise to remove jurisdiction

11 from the courts of this state. This section shall not prevent the exercise of temporary emergency

12 jurisdiction by a court of this State under the Uniform Child Custody Jurisdiction and

13 Enforcement Act.

14

1 [ARTICLE] 2

2 CUSTODY PROCEEDINGS UPON NOTICE OF DEPLOYMENT

3
4 SECTION 201. NOTICE REQUIRED TO NONDEPLOYING PARENT. A

5 deploying parent shall notify the nondeploying parent of the deployment within [] days of
6 receiving an order of deployment. If a valid court order requires that the address or contact
7 information of the nondeploying parent be kept confidential, the notification shall be made to the
8 court only. In the event of a failure to notify the nondeploying parent, the court may award
9 attorneys' fees and costs to the nondeploying parent.

10 SECTION 202. EXPEDITED HEARING. When a deploying parent has received

11 orders of deployment, either parent may move the court for an expedited hearing on any matter
12 pertaining to custodial responsibility. The motion shall include the date on which the deployment
13 begins. On such a motion, and where the imminent deployment of the parent will have a
14 material effect on the parent's ability, or anticipated ability, to appear in person at a regularly
15 scheduled hearing, the Court shall schedule an expedited hearing within [] days.

16 SECTION 203. ELECTRONIC TESTIMONY.

17 (a) A deploying parent who is entitled to a stay in civil proceedings pursuant to the
18 Servicemembers Civil Relief Act, 50 U.S.C. App. §§501–596, may elect to proceed while he or
19 she is reasonably unavailable to appear in the geographical location in which the litigation is
20 pursued and may seek relief and provide evidence through video conferencing, internet camera,
21 email, or other reasonable electronic means.

22 (b) The court may deny the deploying parent the opportunity to present evidence by
23 electronic means if it would cause a substantial injustice, deny effective cross examination, deny
24 the right to confront the witness, or abridge another constitutional right.

1 **SECTION 204. TEMPORARY NATURE OF CUSTODY ORDER.** At or after the
2 time that a deploying parent receives notice of deployment, any court with jurisdiction under the
3 laws of this state may enter a temporary order for custodial responsibility under applicable state
4 law, so long as this order is in compliance with the Servicemembers Civil Relief Act 4 (50 USC
5 Appx. § 522). A court of this state may not enter a permanent order regarding custody or
6 visitation prior to or during a deploying parent’s deployment without the deploying parent’s
7 consent.

8 **SECTION 205. EFFECT OF PRIOR AGREEMENT OR JUDICIAL DECREE.**

9 (a) If a prior judicial decree contains provisions for custodial responsibility of the child in
10 the event of deployment, those provisions are binding on the court in the absence of either: (1) a
11 subsequent change of circumstances that was not foreseen at the time of the prior judicial decree;
12 or (2) a showing that enforcement of those provisions would cause substantial harm to the child.

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

18 **SECTION 206. PROVISIONS OF TEMPORARY CUSTODY ORDER.** When
19 entering a temporary order for custodial responsibility prior to or during a service member’s
20 deployment, the court shall:

21 (a) identify the nature of the deployment that is the basis for the order; state that the
22 order is a temporary order;

23 (b) specify the contact between the deploying parent and his or her child that shall occur

1 during deployment, including the means by which the deploying parent may remain in
2 communication with the child, such as electronic communication by webcam, telephone, or other
3 available means;

4 (c) order liberal contact between the deploying parent and child when the deploying
5 parent is on leave or is otherwise available consistent with the best interests of the child.

6 **SECTION 207. ORDER FOR CHILD SUPPORT.** Where the court enters an order
7 on custody or visitation under this section, it may also, on motion of either parent, and with
8 competent jurisdiction, enter a temporary order for child support consistent with the laws of this
9 state.

10

1 [ARTICLE] 3

2 DELEGATION OF VISITATION TIME.

3
4 **SECTION 301. AUTHORITY TO DELEGATE.** Upon the motion of the deploying
5 parent to delegate visitation rights, the court may grant reasonable visitation to a member of the
6 child’s family, including a stepparent or stepsibling, with whom the child has a close and
7 substantial relationship. A “close and substantial relationship” means one in which a bond has
8 been forged between the child and the other person by regular contact or communications. The
9 visitation awarded under this Article derives from the deploying parent’s own right to custodial
10 responsibility. Neither this Article nor a court order permitting delegation shall be deemed to
11 create any separate or permanent rights to visitation.

12 **SECTION 302. STANDARD FOR DELEGATION.** The court shall grant reasonable
13 visitation upon a finding that it is in the best interests of the child. There shall be a rebuttable
14 presumption that visitation shall not be granted to a family member who has perpetrated
15 domestic violence against a spouse, a child, or a domestic living partner, or to a family member
16 with an individual in the family member's household who has a history of perpetrating domestic
17 violence against a spouse, a child, or a domestic living partner.

18 **SECTION 303. SCOPE OF DELEGATION.** Any visitation ordered by the court
19 under this Article shall be temporary in nature and shall not exceed the amount of custodial time
20 granted to the deploying parent under any existing permanent order or agreement between the
21 parents, with the exception that the court may take into account atypical travel time required to
22 transport the child between the nondeploying parent and the family member to whom visitation
23 rights are delegated.

24 **SECTION 304. CONTENTS OF ORDER.** In an order granting delegation of

1 visitation rights, the court shall:

2 (a) set out a process to resolve any disputes that may arise between the person receiving
3 visitation and the nondeploying parent;

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

5 (c) state that the order is a temporary order and shall terminate at the end of the
6 deployment.

7 **SECTION 305. STANDING TO ENFORCE DELEGATED RIGHTS.** Once the
8 court has ordered visitation, the person to whom visitation is ordered shall have legal standing to
9 enforce this visitation, so long as the deploying parent has not revoked consent to the delegation
10 of visitation rights.

11

1 [ARTICLE] 4

2 PROCEDURES FOLLOWING RETURN FROM DEPLOYMENT

3
4 SECTION 401. PROCEDURE FOR RESUMING PRIOR CUSTODY

5 **ARRANGEMENT.** On the return from deployment, a deploying parent must notify the
6 nondeploying parent of the date of his or her return, and the date he or she seeks that the
7 temporary order for custodial responsibility terminate. If a permanent order regarding custodial
8 responsibility exists, the deploying and nondeploying parents should discuss any transition
9 needed to resume the prior custodial arrangement. In the event that the deploying parent is
10 unable to locate the nondeploying parent, the deploying parent shall file a notice with the court
11 of his or her return.

12 SECTION 402. VISITATION PRIOR TO TERMINATION OF TEMPORARY

13 **ORDER.** If the resumption of the pre-deployment arrangement for custodial responsibility does
14 not follow immediately on the deploying parent's return from deployment, the nondeploying
15 parent shall provide for liberal visitation of the child with the deploying parent until the time that
16 the pre-deployment arrangement is resumed or a court of competent jurisdiction enters an order
17 on custodial responsibility. Liberal visitation is not required in the event that the nondeploying
18 parent reasonably believes that this visitation will cause the child irreparable harm.

19 SECTION 403. TERMINATION OF TEMPORARY CUSTODY ORDER. Any

20 temporary custody order for custodial responsibility shall terminate automatically no later than
21 [30] days after the deploying parent returns from deployment, or [30] days after the deploying
22 parent notifies either the nondeploying parent or the court of the date of his or her return,
23 whichever is later. However, in the event that either parent files a motion to prevent termination
24 during that period on the ground that such termination is likely to cause the child irreparable

1 harm, the temporary order shall not terminate automatically.

2 **SECTION 404. EXPEDITED HEARING.** Any motion by either parent to prevent
3 termination of the temporary custody order that is filed within 30 days of the deploying parent's
4 return shall be heard by the court at an expedited hearing within [] days.

5 **SECTION 405. STANDARD FOR RETAINING TEMPORARY ORDER.** In the
6 event that the court finds that the termination of the temporary order for custodial responsibility
7 is likely to cause the child irreparable harm, the court shall order that the temporary order remain
8 in effect until a hearing can be held on the issue of a permanent change of custodial
9 responsibility. This hearing must be held within [30] days from the date of the court's order
10 extending the temporary order, unless the deploying parent consents to a longer period of time.
11 Where a likelihood of irreparable harm to the child can be prevented through a gradual reversion
12 to the previous custody arrangement, the court shall order such a transition period rather than
13 retain the temporary order.

14 **SECTION 406. AUTHORITY TO ORDER TRANSITION PERIOD.** Where the
15 court finds that an immediate return to the previous arrangement of custodial responsibility
16 would not be in the child's best interests, the court may order a transition period that allows a
17 gradual reversion to that arrangement.

18 **SECTION 407. SANCTIONS FOR BAD FAITH.** If the court finds that a motion to
19 extend the temporary order for custodial responsibility has been made in bad faith, the court shall
20 assess the attorney's fees and court costs of the nonmoving party against the moving party.