



UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

- Summary -

The increased deployment of service members has raised difficult child custody issues that profoundly affect both children's welfare and service members' ability to serve their country efficiently. Stories of service members struggling to balance their military duties with their parental duties have in recent years become commonplace. Because a significant proportion of service members are single parents, the Department of Defense indicates that problems related to child custody and visitation while the parent is deployed detrimentally impact the overall war effort and can impact the ability for service members to complete assigned missions

The only existing federal statutory protection for single-parent service members is the Servicemembers Civil Relief Act ("SCRA"), which governs the general legal rights of a deploying service member. Under the SCRA, judges must grant stays of legal proceedings, including custody proceedings, when military service materially affects the service member's ability to participate in the proceedings. Yet such stays are mandatory only for the first 90 days after deployment. After that time passes, entry of such stays are discretionary and are often overridden by the interests of the affected children in having custody issues resolved. Furthermore, the SCRA provides no procedures to facilitate entry of a temporary custody arrangement for the many service members who recognize that it is in their child's interests for custody to be settled during their absence. Additionally, the SCRA give courts no guidance regarding how to balance service members' interests against other relevant interests, including the best interests of the child.

The SCRA notwithstanding, issues of child custody and visitation are the proper province of state law under the constructs of federalism. Currently, state courts vary considerably in their approach to custody issues on a parent's deployment. Many courts will grant custody to the other natural parent for the duration of the deployment, even over the wishes of the deploying parent. Other courts will grant custody to the person that the service member wishes to designate as custodian, such as a grandparent. Further, at the end of a deployment, some courts have been reluctant to return custody to the deploying parent – even when the custody arrangement during deployment had been deemed only “temporary” – unless the service member can show the child to be significantly worse off living with the other parent.

To resolve these difficult issues, some states have enacted statutes that address custody issues facing service members. However, most of these statutes address only a small range of issues that impact cases involving the custody rights of service members. Furthermore, these statutes vary considerably with one another in both their scope and substantive provisions. Finally, many states have adopted no statutes on this issue.

The result is a system of considerable variability among states when it comes to the treatment of deploying parents, and in which deploying parents are sometimes penalized for their service without clear gains for their children. Because of the mobile nature of military 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.

Responding to the critical need for uniformity and for efficient and just resolution of custody issues when a service member deploys, the Uniform Law Commission drafted the Uniform Deployed Parents Custody and Visitation Act (UDPCVA) in 2012. The goal of the UDPCVA is to facilitate expeditious and fair disposition of cases involving the custody rights of a member of the military. The UDPCVA ultimately promotes a just balance of interests—protecting the rights of the service member, the other parent, and above all the best interest of the children involved.

The UDPCVA is organized into five articles. Article 1 contains definitions and provisions that apply generally to custody matters of service members. It includes a notice provision requiring parents to communicate about custody and visitation issues as soon as possible after a service member learns of deployment. Another provision in this article integrates with the Uniform Child Custody Jurisdiction and Enforcement Act to declare the residence of the deploying parent not changed by reason of the deployment. The article also provides that when imminent deployment is not an issue, a court may not use a parent's past deployment or possible future deployment itself as a negative factor in determining the best interests of the child during a custody proceeding.

Articles 2 and 3 apply to custody issues that arise on notice of and during deployment. Article 2 sets out an easy procedure for parents who agree to a custody arrangement during deployment to resolve these issues by an out-of-court agreement. In the absence of the parents reaching an agreement, Article 3 provides for an expedited resolution of a custody arrangement in court. Article 3 also declares that no permanent custody order can be entered before or during deployment without the service member's consent.

Article 4 governs termination of the temporary custody arrangement following the service member's return from deployment. This article contains one set of procedures that applies when the parents mutually agree that a temporary custody agreement should be terminated; another set applies when the parents mutually agree that a temporary custody order entered by a court should be terminated; a third set applies when the parents reach no agreement regarding the termination of the temporary custody arrangement and require a court to resolve whether a return to the permanent custody arrangement is appropriate. Finally, Article 5 contains an effective date provision, a transition provision, and boilerplate provisions common to all uniform acts.