

D R A F T

FOR DISCUSSION ONLY

DEPLOYED PARENTS VISITATION AND CUSTODY ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-TWENTIETH YEAR
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DEPLOYED PARENTS VISITATION AND CUSTODY ACT

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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May 31, 2011

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DEPLOYED PARENTS VISITATION AND CUSTODY ACT

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1 **DEPLOYED PARENTS VISITATION AND CUSTODY ACT**

2 **[ARTICLE] 1**

3 **GENERAL PROVISIONS**

4 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Deployed Parents
5 Visitation and Custody Act.

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

7 (1) “Adult” means an individual who is at least [18] years of age.

8 (2) “Child” means an unemancipated individual who has not attained [18 years of age], or
9 an adult son or daughter by birth or adoption who is the subject of an existing order determining
10 custodial responsibility.

11 (3) “Court” means an entity authorized under law of this state other than this [act] to
12 establish, enforce, or modify a child-custody determination.

13 (4) “Custodial responsibility” means legal custody, physical custody, or visitation rights
14 with respect to a child.

15 (5) “Deploying parent” means an individual:

16 (A) who is:

17 (i) the legal parent of a child; or

18 (ii) the legal guardian of a child for whom custodial responsibility has
19 been determined by court order;

20 (B) is a service member; and

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

22 (6) “Deployment” means the movement or mobilization of a service member for a period
23 of longer than [60] days pursuant to official orders that are either:

1 (A) designated as unaccompanied;

2 (B) for which dependent travel is not authorized; or

3 (C) otherwise do not permit the movement of family members to that location.

4 Orders include military orders designated as temporary, as well as military orders designated as
5 permanent if the service member intends to return to a location in which family members are
6 authorized within 18 months. “Deploy”, “deploying”, and “deployed” have corresponding
7 meanings.

8 (7) “Legal custody” means the right and duty to make decisions for a child, including
9 those relating to the health, education and welfare of the child, as provided under law of this state
10 other than this [act].

11 (8) “Limited contact” means the opportunity for a third party to visit with a child for a
12 moderate period of time, generally less than a day, which may include taking the child to a place
13 other than the residence of the child.

14 (9) “Nondeploying parent” means an individual who:

15 (A) in common with the deploying parent is:

16 (i) the legal parent of a child; or

17 (ii) the legal guardian of a child for whom custodial responsibility has
18 been determined by court order; and

19 (B) is not deployed and has not been notified of his or her own impending
20 deployment.

21 (10) “Physical custody” means the physical care and supervision of a child.

22 (11) “Primary custodial responsibility” means responsibility for the physical custody of a
23 child for 50 percent or more of the child’s time.

1 (12) “Record” means information that is inscribed on a tangible medium or that is stored
2 in an electronic or other medium and is retrievable in perceivable form.

3 (13) “Service member” means a member of:

4 (A) the active or reserve components of the Army, Navy, Air Force, Marine
5 Corps, or Coast Guard of the United States, including the National Guard in state and federal
6 status; or

7 (B) the commissioned corps of the Public Health Service or the National Oceanic
8 and Atmospheric Administration of the United States.

9 (14) “Third party” means a person other than a deploying parent or nondeploying parent.

10 (15) “Visitation” means responsibility for the physical custody of a child for less than 50
11 percent of the child’s time.

12 **SECTION 103. REMEDIES FOR NONCOMPLIANCE WITH [ACT].** If the court
13 finds that a party to a proceeding under this [act] has acted in bad faith, or otherwise deliberately
14 failed to comply with this [act] or a court order issued under this [act], the court may assess
15 attorney’s fees and costs of the opposing party and order any other appropriate relief.

16 **SECTION 104. JURISDICTION.** The court may enter an order regarding custodial
17 responsibility pursuant to this [act] only where the court has jurisdiction pursuant to the
18 [Uniform Child Custody Jurisdiction and Enforcement Act]. If the court has rendered a
19 temporary order regarding custodial responsibility pursuant to Article 2, the deploying parent
20 shall be deemed to reside in this state for the purposes of the [Uniform Custody Jurisdiction and
21 Enforcement Act] during the duration of the deployment. If a court in another state has rendered
22 a temporary order regarding custodial responsibility as a result of current or impending
23 deployment, this court shall deem the deploying parent to reside in the rendering state for the

1 purposes of the [Uniform Child Custody Jurisdiction and Enforcement Act] during the duration
2 of the deployment. This section does not prohibit the exercise of temporary emergency
3 jurisdiction by the court under the [Uniform Child Custody Jurisdiction and Enforcement Act].

4 **SECTION 105. DUTY TO NOTIFY COURT OF CHANGE OF ADDRESS.** If the
5 court has rendered a temporary order regarding custodial responsibility pursuant to Article 2, any
6 nondeploying parent or any third party to whom the court has assigned primary custodial
7 responsibility, visitation, or limited contact shall notify the court of any change of address until
8 the termination of the temporary order.

[ARTICLE] 2

CUSTODY PROCEEDINGS UPON NOTICE OF DEPLOYMENT

SECTION 201. NOTICE REQUIRED TO NONDEPLOYING PARENT. Except as

otherwise provided in a court order or agreement between the parents that specifically contemplates deployment, a deploying parent shall, in a record, notify the nondeploying parent or other deploying parent of deployment not later than [7] days of receiving notice of deployment. If an existing court order requires that the address or contact information of the nondeploying parent not be disclosed, the notification must be made only to the court, which shall forward the notification to the nondeploying parent. Failure to timely notify the nondeploying parent or other deploying parent without good cause may be presumed contrary to the best interests of the child in future proceedings regarding custodial responsibility between the parents.

SECTION 202. EXPEDITED HEARING. Following a deploying parent's receiving

notice of deployment, either the deploying or nondeploying parent may request an expedited hearing by the court on any matter pertaining to custodial responsibility. The request shall include the date on which the deployment begins; if the date of deployment is uncertain, the approximate date shall be included. If feasible, the court shall grant a request for an expedited hearing if the deploying parent's ability, or anticipated ability, to appear in person at a regularly scheduled hearing would be prevented by the deployment or preparation for the deployment.

SECTION 203. ELECTRONIC TESTIMONY. A deploying or nondeploying parent

involved in a proceeding pursuant to this [article] who is reasonably unavailable to appear personally may request to participate in the hearing through electronic means, including giving testimony and providing evidence. The request shall be granted if the participation is practicable

1 and would not create a substantial injustice.

2 **SECTION 204. EFFECT OF PRIOR JUDICIAL DECREE OR AGREEMENT.** In
3 a proceeding seeking entry of an order regarding custodial responsibility following notice of
4 deployment or during deployment the following rules apply:

5 (1) If a prior judicial decree between a deploying and nondeploying parent, or two
6 deploying parents, contains provisions designating custodial responsibility of the child in the
7 event of deployment, those provisions are binding on the court unless:

8 (A) a [substantial] change of circumstances has occurred that was not foreseeable
9 at the time of the prior judicial decree; and

10 (B) the court makes specific findings of fact as to why enforcement of those
11 provisions would not be in the best interests of the child.

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

17 **SECTION 205. TEMPORARY NATURE OF CUSTODY ORDER.** Following a
18 deploying parent's receiving notice of deployment and for the duration of the deployment,
19 a court with jurisdiction under law of this state other than this [act] may render a temporary order
20 for custodial responsibility consistent with the Servicemembers Civil Relief Act, 50 U.S.C.
21 Appx. Sections 521 and 522. The court may not enter a permanent order regarding custodial
22 responsibility without the consent in a record of the deploying parent.

23 **SECTION 206. PROVISIONS OF TEMPORARY CUSTODY ORDER.** A

temporary order for custodial responsibility rendered under this [article] must:

(1) designate the order as a temporary order;

(2) identify the deployment that is the basis for the order;

(3) specify the allocation of custodial responsibility between the deploying parent and nondeploying parent, if applicable;

(4) specify the frequency, duration, and means by which the deploying parent may remain in contact with the child, including by electronic or other means, and any role to be played by the nondeploying parent in facilitating this communication;

(5) order liberal contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available unless it is contrary to the best interests of the child;

(6) specify any assignment of custodial responsibility to a third party pursuant to Article 3, including the specific powers that accompany this assignment;

(7) specify any assignment of limited contact to a third party pursuant to Article 3;

(8) if the order provides for custodial responsibility in the nondeploying parent while also assigning primary custodial responsibility, visitation, or limited contact to a third party, provide a process to resolve any disputes that may arise between the nondeploying parent and the third party; and

(9) specify that the order shall terminate by further order of the court following the conclusion of deployment.

SECTION 207. ORDER FOR CHILD SUPPORT.

(a) A court that renders an order on custodial responsibility under this [article] may, on motion of either parent and with appropriate jurisdiction under [the Uniform Interstate Family

1 Support Act]:

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

3 and

4 (2) require the deploying parent to enroll the child to receive military dependent

5 benefits.

6 (b) Any order entered on child support pursuant to this [article] shall govern until further

7 order of the court following the conclusion of deployment.

[ARTICLE] 3

JUDICIAL ASSIGNMENT OF CUSTODIAL RESPONSIBILITY TO THIRD PARTIES

SECTION 301. DEFINITIONS. For purposes of this [article],

(1) “Close and substantial relationship” means a relationship in which a significant bond exists between a child and a third party.

(2) “Family member” means a sibling, aunt, uncle, cousin, or grandparent related to a child by blood, adoption, or marriage, and a stepparent of the child.

SECTION 302. ASSIGNMENT OF PRIMARY CUSTODIAL RESPONSIBILITY.

(a) On motion of a deploying parent, the court may assign 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 primary custodial responsibility of the child if the assignment of custodial responsibility is for a percentage of time equal to or less than either:

(1) the amount of time assigned to the deploying parent in an existing permanent custody order; or

(2) in the absence of an existing permanent custody order, the amount of time that the deploying parent regularly cared for the child before being notified of deployment.

[The committee wants the floor to choose between two alternatives:]

Alternative A

(b) The assignment under subsection (a) must be in the best interests of the child.

Alternative B

(b) The assignment under subsection (a) must be in the best interests of the child. There shall be a presumption that primary physical custody in the nondeploying parent is in the best interests of the child if the nondeploying parent seeks temporary custody.

1 **End of Alternatives**

2 **SECTION 303. ASSIGNMENT OF VISITATION.** On motion of a deploying parent,

3 and in accordance with law of this state other than this [act], the court may assign a third party
4 who is an adult family member of the child or an adult with whom the child has a close and
5 substantial relationship visitation with the child if:

6 (1) except for an increase in time because of atypical travel time required to transport the
7 child between the nondeploying parent and the third party, the visitation time assigned is for an
8 amount of time equal to or less than either:

9 (A) the amount of time assigned to the deploying parent in an existing permanent
10 custody order; or

11 (B) in the absence of an existing permanent custody order, the amount of time
12 that the deploying parent regularly cared for the child before being notified of deployment.

13 (2) The assignment under subsection (1) must be in the best interests of the child.

14 **SECTION 304. ASSIGNMENT OF POWERS ACCOMPANYING CUSTODIAL**
15 **RESPONSIBILITY.** Consistent with the best interests of the child, the court may assign any of
16 the powers of the deploying parent regarding care, custody, or property of the child to a third
17 party to whom it assigns primary custodial responsibility or visitation under this [article] if the
18 deploying parent may not be in a position regularly to exercise decision making authority with
19 respect to the child during deployment.

20 **SECTION 305. ASSIGNMENT OF LIMITED CONTACT.** On motion of a
21 deploying parent, and in accordance with law of this state other than this [act], the court shall
22 assign limited contact with the child of a deploying parent to an individual who is either a family
23 member of the child or a person with whom the child has a close and substantial relationship,

1 unless this contact would be contrary to the best interests of the child. Except as otherwise
2 provided in Section 306, the court shall presume allowing limited contact is in the best interests
3 of the child. This presumption may be rebutted if the court makes specific findings of fact
4 explaining why limited contact is not in the best interests of the child.

5 **SECTION 306. THIRD PARTIES TO WHOM ASSIGNMENTS MAY NOT BE**
6 **MADE.**

7 **Alternative A**

8 (a) The presumption against awarding custodial responsibility to a perpetrator of
9 domestic violence established in [code section or judicial decision] shall apply to an assignment
10 of primary custody, visitation, or limited contact to a third party under this [article].

11 (b) There is a rebuttable presumption that the court will not make an assignment of
12 primary custody, visitation, or limited contact to a third party who is a registered sex offender.

13 (c) There is a rebuttable presumption that the court will not make an assignment of
14 primary custody, visitation, or limited contact to a third party who lives in the same household
15 with another individual who is either a registered sex offender or who would be covered by the
16 presumption against custodial responsibility established in subsection a on account of having
17 perpetrated an act of domestic violence.

18 **Alternative B**

19 There is a rebuttable presumption that the court will not make an assignment of primary
20 custody, visitation, or limited contact to a third party:

- 21 (1) who is a registered sex offender; or
22 (2) who has been adjudicated as having committed an act or acts of domestic
23 violence against a spouse, a child, or a domestic partner; or

(3) who lives in the same household with another individual who is either a registered sex offender or who has been adjudicated of having committed an act of domestic violence against a spouse, a child, or a domestic partner, if the assignment permits the child to visit or reside in the household.

***Legislative Note:** Alternative A should be used if the state has an existing presumption against assigning custodial responsibility to persons who have committed acts of domestic violence. Alternative B should be if the state has no existing presumption against assigning custodial responsibility to persons who have committed acts of domestic violence.*

SECTION 307. NATURE OF ASSIGNMENTS. Primary custodial responsibility, visitation, or limited contact assigned to a third party under this [article] derives from the deploying parent's right to custodial responsibility. Neither this [article] nor a court order assigning primary custodial responsibility, visitation, or limited contact under this [article] creates an independent or permanent right to primary custodial responsibility, visitation, or limited contact. Any assignment under this [article] shall end with the termination of the temporary custody order entered pursuant to Articles 2 or 3, if the assignment has not been terminated before that time by a separate order of the court rendering the order.

SECTION 308. STANDING TO ENFORCE ASSIGNED RIGHT. A third party who has been assigned primary custodial responsibility, visitation, or limited contact pursuant to this [article], has standing to enforce the order of the court until the assignment is terminated.

SECTION 309. DEPLOYING PARENT'S MOTION FOR MODIFICATION OR TERMINATION OF ASSIGNMENT.

(a) On motion of a deploying parent, the court shall modify or terminate the assignment of primary custodial responsibility or visitation made to a third party under this [article] if the modification or termination comports with this [article] and is consistent with the best interests

1 of the child.

2 (b) On motion of a deploying parent, the court shall modify the assignment of limited
3 contact made to a third party under this [article] if the modification comports with this [article]
4 and is consistent with the best interests of the child.

5 (c) On motion of a deploying parent, the court shall terminate the assignment of limited
6 contact made under this [act] if the termination comports with other sections of this [act].

7 **SECTION 310. NONDEPLOYING PARENT’S MOTION FOR MODIFICATION**
8 **OR TERMINATION OF ASSIGNMENT.**

9 (a) On motion of a nondeploying parent, the court shall modify the assignment of primary
10 custodial responsibility, visitation, or limited contact made to a third party under this [article] if
11 the modification otherwise comports with the terms of this [article] and is consistent with the
12 best interests of the child.

13 (b) On motion of a nondeploying parent, the court shall terminate the assignment of
14 primary custodial responsibility, visitation, or limited contact made to a third party under this
15 [article] if the termination is consistent with the best interests of the child.

[ARTICLE] 4

PROCEDURES FOLLOWING RETURN FROM DEPLOYMENT

SECTION 401. VISITATION BEFORE TERMINATION OF TEMPORARY

ORDER. Following return from deployment of a deploying parent until the time that a temporary order entered pursuant to Article 2 is terminated, the deploying parent has the right of reasonable contact with the child, which may include more time than the deploying parent spent with the child prior to entry of the temporary order in order to allow the deploying parent to reestablish a bond with the child in light of the time not spent with the child during deployment.

SECTION 402. CONSENT PROCEDURE FOR TERMINATING TEMPORARY CUSTODY ORDER.

(a) At any time following return from deployment, a deploying parent who seeks to terminate a temporary order of custodial responsibility entered pursuant to Article 2 may file with the court a signed consent notice of resumption of prior custody arrangement that has been signed by the deploying parent, the nondeploying parent, and a third party who has been assigned primary custodial responsibility under this [act]. The consent notice may either state that custodial responsibility should be transferred as of the date the notice is filed or that it should be transferred as of a future date certain.

(b) Once a consent notice of resumption of prior custody arrangement has been filed, the court shall enter an order terminating the temporary custody order on the date for termination specified in the consent notice.

SECTION 403. STANDARD PROCEDURE FOR TERMINATING TEMPORARY CUSTODY ORDER.

(a) Within six months following return from deployment, a deploying parent who seeks

1 to terminate a temporary order for custodial responsibility entered pursuant to Article 2 may file
2 with the court a notice of resumption of prior custody arrangement. The notice must state the
3 date by which the temporary order should be terminated, which may be not sooner than [30] days
4 after the notice is filed. A copy of the notice must be sent to the nondeploying parent and to a
5 third party who has been assigned primary custodial responsibility during deployment, except
6 that notice may be sent only to the court if a court order requires the address or other contact
7 information of recipients of the notice not be disclosed. If notice is sent only to the court, the
8 court shall notify the nondeploying parent or third party.

9 (b) If the nondeploying parent or a third party who has been assigned primary custodial
10 responsibility fails to object to the termination of the temporary order for custodial responsibility
11 not later than [30] days from the filing of the notice of resumption of prior custody arrangement,
12 the court shall enter an order terminating the temporary order on the date requested by the
13 deploying parent.

14 (c) If an objection to the termination of the temporary order for custodial responsibility is
15 filed not later than [30] days from the filing of the notice of resumption of prior custody
16 arrangement by the nondeploying parent or a third party who has been assigned temporary
17 primary custodial responsibility, the court shall hold an expedited hearing not later than [10]
18 days from the filing of the objection unless an expedited hearing is waived by the deploying
19 parent.

20 (d) Following the hearing held under subsection (c), the court shall render a decision as
21 soon as practicable. Unless the court finds that termination of the temporary order for custodial
22 responsibility is likely to cause the child substantial harm, the court shall terminate the temporary
23 custody order. In determining whether the termination of the temporary order is likely to cause

1 the child substantial harm, the court shall consider whether harm can be ameliorated through a
2 gradual reversion to the previous arrangement for custodial responsibility or in some other
3 manner.

4 (e) If the court determines that termination of the temporary order for custodial
5 responsibility is likely to cause the child substantial harm, the temporary order shall remain in
6 effect until further order of this court or another court with jurisdiction under law of this state
7 other than this [act].

8 **SECTION 404. POST-HEARING PROCEDURES FOR MODIFICATION OR**
9 **RESUMPTION OF PERMANENT CUSTODY ARRANGEMENT.** If the court has
10 determined that terminating a temporary order for custodial responsibility entered pursuant to
11 Article 2 would likely cause the child substantial harm, the following rules apply:

12 (1) Any person with standing under law of this state other than this [act], including the
13 deploying parent, may file a motion to modify the permanent custody order, or to enter a
14 permanent custody order if there is no existing permanent custody order. If such a motion to
15 modify the permanent custody order is filed not later than six months from the court's refusal to
16 terminate the temporary order for custodial responsibility, the court shall hold an expedited
17 hearing on the issue of permanent custody not later than [21] days from the date of the filing of
18 the motion, unless the deploying parent consents to a longer period of time.

19 (2) The deploying parent may file another motion to terminate the temporary order for
20 custodial responsibility and to resume the prior custody arrangement on the ground of changed
21 circumstances. If such a motion is filed, the court shall hold an expedited hearing on the motion
22 not later than [21] days from the date of the filing of the motion, unless the deploying parent
23 consents to a longer period of time.

[ARTICLE] 5

CONSIDERATION OF PARENT'S SERVICE IN CUSTODY PROCEEDINGS WHEN

NO DEPLOYMENT IS PENDING

SECTION 501. GENERAL CONSIDERATION OF PARENT'S SERVICE IN

CUSTODY PROCEEDINGS. In all proceedings for custodial responsibility of a child of a service member, except for a proceeding for temporary custody pursuant to Article 2, the court may not consider the parent’s military service, including past deployment or possible future deployment, itself as a negative factor in determining the best interests of the child. However, the material effects on the child of the parent’s past or possible future service may be considered.

[ARTICLE] 6

MISCELLANEOUS PROVISIONS

SECTION 601. 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 602. 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 603. EFFECTIVE DATE. This [act] takes effect