

D R A F T
FOR DISCUSSION ONLY

UNIFORM DEPLOYED PARENTS CUSTODY ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

February 2011 Committee Meeting Draft with Post Meeting Revisions

Without Prefatory Note or Comments

Name Change pending Executive Committee Approval

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March 15, 2011

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UNIFORM DEPLOYED PARENTS CUSTODY ACT

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1 **UNIFORM DEPLOYED PARENTS CUSTODY ACT**

2 **[ARTICLE] 1**

3 **GENERAL PROVISIONS**

4 **SECTION 101. SHORT TITLE.** This [act] may be cited as the [Uniform Deployed
5 Parents 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 the law of this state to establish, enforce, or
12 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 so long as the service member intends to return to a location in which family
6 members are authorized within 18 months. "Deploy", "deploying", and "deployed" have
7 corresponding 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 state law.

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

13 (9) "Nondeploying parent" means an individual:

14 (A) who in common with the deploying parent is:

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

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

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

20 (10) "Physical custody" means the physical care and supervision of a child.

21 (11) "Primary custodial responsibility" means responsibility for the physical custody of a
22 child for 50 percent or more of the child's time.

23 (12) "Record" means information that is inscribed on a tangible medium or that is stored

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

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

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

6 (B) the commissioned corps of the Public Health Service, or the commissioned
7 corps of the National Oceanic and Atmospheric Administration of the United States; or

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

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

16 **SECTION 104. JURISDICTION.** A court of this state may enter an order regarding
17 custodial responsibility pursuant to this [act] only where the court has jurisdiction pursuant to the
18 [Uniform Custody Jurisdiction and Enforcement Act]. If a court in this state has rendered a
19 temporary order regarding custodial responsibility pursuant to [article] 2 of this [act], the
20 deploying parent shall be deemed to reside in this state for the purposes of the [Uniform Custody
21 Jurisdiction and Enforcement Act] during the duration of the deployment. Furthermore, if a court
22 in another state has rendered a temporary order regarding custodial responsibility pursuant to
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 a court of this state under the [Uniform Child Custody Jurisdiction and
4 Enforcement Act].

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

[ARTICLE] 2

1 **CUSTODY PROCEEDINGS UPON NOTICE OF DEPLOYMENT**

2 **SECTION 201. NOTICE REQUIRED TO NONDEPLOYING PARENT.** Except as

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

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

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

19 **SECTION 203. ELECTRONIC TESTIMONY.** A deploying parent or nondeploying

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

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

2 **SECTION 204. EFFECT OF PRIOR JUDICIAL DECREE OR AGREEMENT.**

3 (a) In a proceeding seeking entry of an order regarding custodial responsibility following
4 notice of deployment or during deployment:

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 [material] [substantial] change of circumstances has occurred that
9 was not foreseeable at the time of the prior judicial decree; and

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

12 (2) If the deploying parent and nondeploying parent, or two deploying parents,
13 have previously agreed in writing to provisions for custodial responsibility of the child in the
14 event of deployment, the court shall presume that the agreement is in the best interests of the
15 child. This presumption may be rebutted if the court makes specific findings of fact as to why
16 enforcement 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 may render a temporary order for custodial responsibility under
20 applicable state law, if the order is consistent with the Servicemembers Civil Relief Act, 50
21 U.S.C. Appx. Sections 521, and 522. The court may not enter a permanent order regarding
22 custody or visitation without the consent in a record of the deploying parent.

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

1 temporary order for custodial responsibility rendered under this article must:

2 (1) designate the order as a temporary order;

3

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

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

6 nondeploying parent, if applicable;

7 (4) specify the frequency, duration, and means by which the deploying parent may

8 remain in contact with the child, including by electronic communication, or other available

9 means, and any role of the nondeploying parent in facilitating this communication;

10 (5) order liberal contact between the deploying parent and child during the time the

11 deploying parent is on leave or is otherwise available unless it is contrary to the best interests of

12 the child;

13 (6) specify any assignment of custodial responsibility to a third party pursuant to Article

14 3, including the specific powers that accompany this assignment;

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

16 (8) if the order provides for custodial responsibility in the nondeploying parent while also

17 assigning primary custodial responsibility, visitation, or limited contact to a third party, provide a

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

19 party; and

20 (9) specify that the order shall terminate by further order of the court following the

21 conclusion of deployment.

22 **SECTION 207. ORDER FOR CHILD SUPPORT.**

23 (a) A court that renders an order on custodial responsibility under this [article], may, on

24 motion of either parent and with appropriate jurisdiction under [the Uniform Interstate Foreign

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] must state that it shall

7 terminate by further order of this court following the conclusion of deployment.

8

1 [ARTICLE] 3

2 JUDICIAL ASSIGNMENT OF CUSTODIAL RESPONSIBILITY TO THIRD PARTIES

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

4 (a) “Close and substantial relationship” means a relationship in which a significant bond
5 has been forged between a child and a third party by regular contact or communication.

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

8 SECTION 302. ASSIGNMENT OF PRIMARY CUSTODIAL RESPONSIBILITY.

9 On motion of a deploying parent, and in accordance with other law of this state, the court
10 may assign a third party who is an adult family member of the child or an adult with whom the
11 child has a close and substantial relationship primary custodial responsibility of the child if:

12 (a) The assignment of custodial responsibility is for a percentage of time equal to or less
13 than either:

14 (1) the amount of time assigned to the deploying parent in a permanent custody
15 order; or

16 (2) in the absence of a permanent custody order, the amount of time that the
17 deploying parent habitually cared for the child before being notified of deployment; and

18 (b) The assignment is in the best interests of the child. [Committee wanted full
19 membership to consider alternative of adding: “There shall be a presumption that
20 primary physical custody in the nondeploying parent is in the best interests of the child if
21 the nondeploying parent seeks temporary custody.”]

22 SECTION 303. ASSIGNMENT OF VISITATION. On motion of a deploying parent,
23 and in accordance with other law of this state, the court may assign a third party who is an adult

1 family member of the child or an adult with whom the child has a close and substantial
2 relationship visitation with the child if:

3 (a) the visitation time assigned is for a percentage of time equal to or less than either:

4 (1) the amount of time assigned to the deploying parent in a permanent custody
5 order; or

6 (2) in the absence of a permanent custody order, the amount of time that the
7 deploying parent habitually cared for the child before being notified of deployment;
8 the court may, however, consider atypical travel time required to transport the child between the
9 nondeploying parent and the third party to whom visitation is assigned; and

10 (b) the assignment is in the best interests of the child.

11 **SECTION 304. ASSIGNMENT OF POWERS ACCOMPANYING CUSTODIAL**
12 **RESPONSIBILITY.** The court may assign any of the powers of the deploying parent regarding
13 care, custody, or property of the child to a third party to whom it assigns primary custodial
14 responsibility or visitation. These powers include decision making powers entailed by legal
15 custody if the deploying parent has legal custody and may not be in a position regularly to
16 exercise his or her decision making authority with respect to the child during deployment.

17 **SECTION 305. ASSIGNMENT OF LIMITED CONTACT.**

18 (a) On motion of a deploying parent, and in accordance with other law of this state, the
19 court shall assign limited contact with the child of a deploying parent to an individual who is
20 either a family member of the child or a person with whom the child has a close and substantial
21 relationship, unless this contact would be contrary to the best interests of the child. Except as
22 otherwise provided in Section 306, the court shall presume allowing limited contact is in the best
23 interests of the child. This presumption may be rebutted if the court makes specific findings of

1 fact explaining why limited contact is not in the best interests of the child.

2 **SECTION 306. THIRD PARTIES TO WHOM ASSIGNMENTS MAY BE MADE.**

3 There is a rebuttable presumption that the court will not make assignments of primary
4 custody, visitation, or limited contact to an individual:

5 (a) who is a registered sex offender; or

6 (b) who has committed an act or acts of domestic violence against a spouse, a child, or a
7 domestic partner; or

8 (c) who lives in the same household with another individual who is either a registered sex
9 offender or who has committed an act of domestic violence against a spouse, a child, or a
10 domestic partner.

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

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

1 **SECTION 309. DEPLOYING PARENT’S MOTION FOR MODIFICATION OR**
2 **TERMINATION OF ASSIGNMENT.**

3 (a) On motion of a deploying parent, the court shall modify the assignment of primary
4 custodial responsibility or visitation made to a third party under this [act] if the modification
5 comports with other sections of this article and is consistent with the best interests of the child.

6 (b) On motion of a deploying parent, the court shall terminate the assignment of primary
7 custodial responsibility or visitation made to a third party under this [act] if the termination is
8 consistent with the best interests of the child.

9 (c) On motion of a deploying parent, the court shall modify the assignment of limited
10 contact made to a third party under this [act] if the modification comports with other sections of
11 this article and is consistent with the best interests of the child.

12 (d) On motion of a deploying parent, the court shall terminate the assignment of limited
13 contact made under this [act].

14 **SECTION 310. NONDEPLOYING PARENT’S MOTION FOR MODIFICATION**
15 **OR TERMINATION OF ASSIGNMENT.**

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

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

23

1 [ARTICLE] 4

2 PROCEDURES FOLLOWING RETURN FROM DEPLOYMENT

3 SECTION 401. VISITATION BEFORE TERMINATION OF TEMPORARY

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

10 SECTION 402. CONSENT PROCEDURE FOR TERMINATING TEMPORARY

11 CUSTODY ORDER.

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

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

1 **SECTION 403. STANDARD PROCEDURE FOR TERMINATING TEMPORARY**
2 **CUSTODY ORDER.**

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

12 (b) If the nondeploying parent or a third party who has been assigned primary custodial
13 responsibility fails to object to the termination of the temporary order for custodial responsibility
14 is filed within [30] days of the filing of the notice of resumption of prior custody arrangement ,
15 the court shall enter an order terminating the temporary order on the date requested by the
16 deploying parent.

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

22 (d) Following the hearing, the court shall render a decision as soon as practicable. Unless
23 the court finds that termination of the temporary order for custodial responsibility is likely to

1 cause the child [substantial harm], the court shall terminate the temporary custody order. In
2 determining whether the termination of the temporary order is likely to cause the child
3 [substantial harm], the court shall consider whether harm can be ameliorated through a gradual
4 reversion to the previous arrangement for custodial responsibility or in some other manner.

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

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 of this [act] would likely cause the child substantial harm;

12 (a) any person with standing under state law, including the deploying parent, may file a
13 motion to modify the permanent custody order, or to enter a permanent custody order if there is
14 no existing permanent custody. If such a motion to modify the permanent custody order is filed
15 within six months of the court's refusal to terminate the temporary order for custodial
16 responsibility, the court shall hold an expedited hearing on the issue of permanent custody within
17 [21] days from its date of filing, unless the deploying parent consents to a longer period of time.

18 (b) the deploying parent may file another motion to terminate the temporary order for
19 custodial responsibility order and to resume the prior custody arrangement on the ground of
20 changed circumstances. If such a motion is filed, the court shall hold an expedited hearing on the
21 motion within [21] days from its date of filing, unless the deploying parent consents to a longer
22 period of time.

23

1 [ARTICLE] 5

2 **CONSIDERATION OF PARENT’S SERVICE IN CUSTODY PROCEEDINGS WHEN**

3 **NO DEPLOYMENT IS PENDING**

4 **SECTION 501. GENERAL CONSIDERATION OF PARENT’S SERVICE IN**
5 **CUSTODY PROCEEDINGS.** In all proceedings for custodial responsibility of a child of a
6 service member, except for a proceeding for temporary custody pursuant to Article 2 of this
7 [act], the court may not consider the parent’s military service, including past deployment or
8 possible future deployment, itself as a negative factor in determining the best interests of the
9 child. However, the material effects on the child of the parent’s past or possible future service
10 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, and supersedes the federal 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