

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

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIRST YEAR
NASHVILLE, TENNESSEE
JULY 13 - JULY 19, 2012

WITHOUT PREFATORY NOTE OR COMMENTS

COPYRIGHT © 2012

By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

July 18, 2012

*The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.

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 is at least [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, including 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 an existing court order concerning custodial responsibility.

(4) “Close and substantial relationship” means a relationship in which a significant bond exists between a child and a nonparent.

(5) “Court” means an entity authorized under law of this state other than this [act] to establish, enforce, or modify a decision regarding custodial responsibility.

(6) “Custodial responsibility” is a comprehensive term that includes any and all powers and duties relating to caretaking authority and decision making authority for a child. The term includes custody, physical custody, legal custody, parenting time, right to access, visitation, and the authority to designate limited contact with a child.

(7) “Decision-making authority” means the power to make important decisions regarding a child, including decisions regarding the child’s education, religious training, health

care, extra curricular activities, and travel. The term does not include day-to-day decisions that necessarily accompany a grant of caretaking authority.

(8) “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 other than a parent who has custodial responsibility of a child under law of this state other than this [act];

(9) “Deployment” means the movement or mobilization of a service member to a location for more than [90] days but less than [18] months pursuant to an official order that:

(A) is designated as unaccompanied;

(B) does not authorize dependent travel; or

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

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

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

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

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

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

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

(14) “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.

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

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

(17) “State” means a state of the United States, the District of Columbia, Puerto Rico, and 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 Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(C) the National Guard.

SECTION 103. REMEDIES FOR NONCOMPLIANCE. In addition to other relief provided by 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 of the opposing 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 pursuant to [the Uniform Child Custody Jurisdiction and Enforcement Act]. If the 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.

(b) 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].

(c) 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].

(d) This section does not prohibit the exercise of temporary emergency jurisdiction by a court under [Uniform Child Custody Jurisdiction and Enforcement Act].

SECTION 105. NOTICE REQUIRED OF DEPLOYING PARENT.

(a) Except as 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 such notification within [seven] days, such notification shall be made as soon as reasonably possible thereafter.

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

(c) If an existing court order prohibits disclosure of the address or contact information of the other parent, a 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) Notice in a record is not required if the parents are living in the same residence and there is actual notice of the deployment or plan.

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

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 assigned or granted during deployment pursuant to [Article] 2 or 3 shall notify the deploying parent and any other individual with custodial responsibility of any change of mailing address or residence until the assignment or grant is terminated. The individual shall provide the notice to any court that has issued an existing custody or child support order concerning the child.

(b) If an existing court order prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been assigned or granted, a notification of change of mailing address or residence 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 assigned or 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: It is contemplated that this Section will be codified separately from the rest of the Act, as part of the general custody provisions of the state.

[ARTICLE] 2

AGREEMENT ADDRESSING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

SECTION 201. FORM OF AGREEMENT.

(a) The parents of a child may enter into a temporary agreement 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) An agreement under subsection (a) may:

(1) identify to the extent feasible 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, if applicable;

(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 the agreement shares custodial responsibility between the other parent and a nonparent, or between two 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 allocation of any costs of communications;

(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 existing 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 terminates following the deploying parent's return from deployment according to the procedures under [Article] 4; and

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

SECTION 202. NATURE OF AUTHORITY CREATED BY AGREEMENT.

(a) An agreement under this [article] is temporary and terminates pursuant to [Article] 4 following the return from deployment of the deployed parent, unless the agreement has been terminated before that time by court order or modification of the agreement under Section 203. The agreement derives from the parents' custodial responsibility and 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 given 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 pursuant to an agreement of the parents under Section 203, under [Article] 4, or by court order.

SECTION 203. MODIFICATION OF AGREEMENT.

(a) The parents may modify an agreement regarding custodial responsibility made

pursuant to this [article] by mutual consent.

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

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

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

[ARTICLE] 3

JUDICIAL PROCEDURE FOR GRANTING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

SECTION 301. PROCEEDING FOR TEMPORARY CUSTODY ORDER.

(a) After a deploying parent receives notice of deployment and during the deployment, a

court may issue a temporary order granting custodial responsibility unless prohibited by the Servicemembers Civil Relief Act, 50 U.S.C. Appx. Sections 521-522. 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 shall be filed in an existing [proceeding] for custodial responsibility of the child with jurisdiction under Section 104 or, if there is no existing [proceeding] in a court with jurisdiction under Section 104, in a new action for granting custodial responsibility during deployment.

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

SECTION 303. TESTIMONY BY ELECTRONIC MEANS. In a proceeding brought under this [article], a party or witness who is not reasonably available to appear personally may appear and provide testimony and present evidence by electronic means unless the court finds good cause to require a personal appearance.

SECTION 304. EFFECT OF PRIOR JUDICIAL DECREE 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 of a child 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 of a child in the event of deployment, including a prior written agreement executed under [Article] 2, unless the court finds the agreement contrary to the best interest of the child.

SECTION 305. GRANT OF CARETAKING OR DECISION-MAKING

AUTHORITY TO NONPARENT.

(a) On the motion of a deploying parent and in accordance with law of this state other than this [act], a court may grant caretaking authority of a child 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 it is in the best interest of the child.

(b) Unless the 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 time granted to the deploying parent in an existing permanent custody order, except that the court may add unusual travel time necessary to transport the child; or

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

(c) A court may grant part of the deploying parent's decision-making authority for a child 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 the deploying parent is unable to exercise that authority.

When a court grants the authority to a nonparent, the court shall specify the decision-making powers that will and will not be granted, including applicable health, educational, and religious decisions.

SECTION 306. GRANT OF LIMITED CONTACT. On motion of a deploying parent and in accordance with law of this state other than this [act], a court shall grant limited contact with a child to a nonparent who is either a family member of the child or an individual with whom the child has a close and substantial relationship, unless the court finds that the contact would be contrary to the best interest of the child.

SECTION 307. NATURE OF AUTHORITY CREATED BY ORDER.

(a) A grant made pursuant to this [article] is temporary and terminates pursuant to [Article] 4 following the return from deployment of the deployed 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 under [Article] 4 or by court order.

SECTION 308. 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, a temporary order for custodial responsibility 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 significant 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 is otherwise available, unless contrary to the best interest of the child;

(5) provide for reasonable contact between the deploying parent and the child following return from deployment until the temporary order is terminated, which may include more time than the deploying parent spent with the child before entry of the temporary order; and

(6) provide that the order will terminate following return from deployment according to the procedures under [Article] 4.

SECTION 309. ORDER FOR CHILD SUPPORT. If a court has issued an order providing for grant of 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].

SECTION 310. MODIFYING OR TERMINATING ASSIGNMENT OR GRANT OF CUSTODIAL RESPONSIBILITY TO NONPARENT.

(a) Except for an order in accordance with section 304, or as otherwise provided in subsection (b), and consistent with the Servicemembers Civil Relief Act, 50 U.S.C. Appx. Sections 521-522, 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 a grant of caretaking authority, decision-making authority, or limited contact made pursuant to this [act] if the modification or termination is consistent with this [article] and the court finds it is in the best interest of the child. Any modification shall be temporary and terminates following the conclusion of deployment of the deployed parent according to the procedures under [Article] 4, 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.

[ARTICLE] 4

RETURN FROM DEPLOYMENT

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

(a) At any time following 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) The temporary agreement granting custodial responsibility terminates:

(1) if the agreement to terminate 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 both parents.

(c) In the absence of an agreement to terminate, the temporary agreement granting custodial responsibility terminates [60] days from the date of the deploying parent's giving notice to the other parent of having returned from deployment.

(d) If the temporary agreement granting custodial responsibility was filed with a court [administrative agency] pursuant to Section 205, an agreement to terminate the temporary agreement must also be filed with that court [administrative agency] within a reasonable period of time after the signing of the agreement. The case number and heading of the existing custodial responsibility or child support case 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 following return 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 on the date specified in the agreement. If no date is specified, the court shall issue the order immediately.

SECTION 403. VISITATION BEFORE TERMINATION OF TEMPORARY GRANT OF CUSTODIAL RESPONSIBILITY. Following return from deployment of a deploying parent until a temporary agreement or order for custodial responsibility established under [Article] 2 or 3 is terminated, the court shall enter 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 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) A temporary order for custodial responsibility issued under [Article] 3 shall terminate, if no agreement between the parties to terminate a temporary order for custodial responsibility has been filed, [60] days from the date of the deploying parent's giving notice of having returned from deployment to the other parent and any nonparent granted custodial responsibility.

(b) Any proceedings seeking to prevent termination of a temporary order for custodial responsibility are 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, 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 503. TRANSITION PROVISION. This [act] does not affect the validity of a temporary court order concerning custodial responsibility during deployment that was entered before [the effective date of this [act]].

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