

DRAFT
FOR DISCUSSION ONLY

DEPLOYED PARENTS VISITATION AND CUSTODY ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For February 24-26, 2012 Committee Meeting

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February 9, 2012

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1 **DEPLOYED PARENTS VISITATION AND CUSTODY ACT**

2 **PREFATORY NOTE**

3
4 The Deployed Parents Visitation and Custody Act (DPVCA) addresses issues of child
5 custody and visitation that arise when parents are deployed in military or other national service.
6 Deployment in national service raises custody issues that are not adequately dealt with in the law
7 of many states. In many instances, notice of deployment will be sudden, making it difficult to
8 resolve custody issues before the deployment by ordinary child custody procedures.
9 Furthermore, overseas deployment of parents may raise special difficulties in ensuring that the
10 parent-child bond remains intact during the parent’s absence. In addition, the return from
11 deployment raises questions regarding how and when the temporary custody situation should be
12 ended and the permanent custody situation resumed. In all these stages, there is the need to
13 ensure that parents who serve their country are not penalized for their service, while still giving
14 adequate weight to the interests of the other parent, and, most importantly, the best interests of
15 the child.

16
17 The issues surrounding child custody of service members are complicated by variance
18 among the law of different states. Issues of child custody and visitation are the province of state
19 law. Because of the mobile nature of military service, and because a child’s other parent will
20 often live in or move to a different state than the deployed service member, bringing the child
21 with them, there are many times in which custody issues relating to the child of a service
22 member will involve two or more states. Currently, however, there is a wide variety in the law
23 applied to custody issues that arise on the deployment of a parent. Many states have adopted
24 statutes that address the custody issues that service members face, but these vary widely among
25 states. The service members who are eligible for their protections differ considerably among
26 states. Further, some of these statutes allow the service member to delegate custody to another
27 without a court order; others do not. Some provide for expedited court procedures before
28 deployment; others do not. Some allow for automatic reversion to the permanent custody order
29 on the service member’s return from deployment; others do not. Other states have adopted no
30 laws that specifically apply to custody issues relating to service members. These states differ
31 with one another on how they treat custody issues on deployment, and often apply very different
32 laws to this situation than is applied in states that have adopted statutes. A uniform approach to
33 these issues would greatly increase predictability and certainty for the families affected, and
34 would increase fairness by ensuring that the same standards applied no matter where the parents
35 lived or a family happened to be posted before deployment.

36 The Drafting Committee was assisted by numerous officially designated advisors and
37 observers, representing an array of organizations. In addition to the American Bar Association
38 advisors listed above, important contributions were made by Colonel Pam Harms, Staff Judge
39 Advocate, U.S. Army Pacific; John T. Meixell, Chief, Legal Assistance Policy Division, U.S.
40 Army; Major Lyndsey Olson, A.G.R. Deputy State Judge Advocate, Minnesota National Guard;
41 Colonel Shawn Shumake, former U.S. Army Director, Office of Legal Policy; and Robert G.
42 Spector, the Reporter for the Joint Editorial Board for Uniform Family Laws and the Reporter for
43 the Uniform Child Custody Jurisdiction and Enforcement Act (1997).

1 Drafting of the DPVCA began in 2010. The Act had its first reading at the Uniform Law
2 Commission 2011 Annual Meeting, and was approved at the 20__ Annual Meeting.

3 4 **The Structure of the DPVCA**

5
6 The DPVCA is organized into six articles. Article 1 contains definitions and general
7 provisions that apply generally to custody matters of service members, as well as jurisdictional
8 provisions, and notice requirements for deployed service members. Articles 2 and 3 apply to
9 custody issues that arise on notice of and during deployment, depending on whether the parents
10 reach an agreement or require a court to resolve custody issues. In those cases where the parents
11 resolve these issues, Article 2 allows them to reach agreement between themselves, and sets out
12 out procedural and substantive provisions that govern their agreement. In the absence of the
13 parents reaching an agreement, Article 3 sets out provisions for an adjudicated resolution of a
14 custody dispute on notice of deployment of a service member. Article 4 applies on the service
15 member's return from deployment; it contains procedures that govern termination of the
16 temporary custody arrangement. One set of procedures in this article applies when the parents
17 agree that a temporary custody agreement should be terminated; another applies when the
18 parents agree that a temporary custody order entered by a court should be terminated; a third
19 applies when the parents reach no agreement and require a court to resolve whether a return to
20 the permanent custody arrangement is appropriate. Article 5 covers consideration of service
21 member's service in custody proceedings generally, when imminent deployment is not an issue.
22 In contrast to earlier articles, this article does not directly concern custody procedures connected
23 with the specific deployment of a service member. Instead, it seeks to amend the state's general
24 standard for child custody to limit the negative impact that past or future service may have on
25 custody. It is anticipated that states would codify this article separately from the rest of the act,
26 as part of their general custody provisions. Finally, Article 6 contains an effective date provision,
27 a transition provision, and boilerplate provisions common to all uniform acts.

28 29 **The Problem of Differing Terminology**

30
31 States differ on the terminology that they use to describe issues of custody and visitation.
32 The DPVCA, however, seeks to retain some uniformity in the terminology used in custody cases
33 arising from deployment, given the prospect that many of these cases will involve more than one
34 jurisdiction. An enacting state that uses different terminology than the DPVCA is encouraged,
35 insofar as it is possible, to include its terminology in the definitions of the terms used in the Act,
36 without replacing the Act's existing terms or the definitions of those terms. Use of common
37 terms and definitions by states enacting the Act will facilitate resolution of cases involving
38 multiple jurisdictions.

1 (ii) an individual other than a parent who has custodial responsibility of a
2 child under law of this state other than this [act];

3 (B) is a service member; and

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

5 (8) “Deployment” means the movement or mobilization of a service member to a location
6 for a period longer than [90] days pursuant to official orders

7 (A) that:

8 (i) are designated as unaccompanied;

9 (ii) do not authorize dependent travel; or

10 (iii) otherwise do not permit the movement of family members to that
11 location; and

12 (B) are designated:

13 (i) as temporary; or

14 (ii) as permanent, if the service member intends to return to a
15 location in which family members are authorized not later than 18 months after the date of the
16 movement or mobilization.

17 (9) “Family member” includes a sibling, aunt, uncle, cousin, stepparent, or grandparent of
18 a child, as well as other persons who would be recognized to be in a familial relationship with a
19 child under law of this state other than this [act]].

20 (10) “Limited contact” means the opportunity for a nonparent to visit with a child for a
21 limited period of time, and may include authority to take the child to a place other than the
22 residence of the child.

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

1 (12) “Other parent” means an individual who, in common with a deploying parent, is
2 either:

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

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

6 (13) “Physical custody” means the right to live with and care for a child on a day-to-day
7 basis. It includes the right to visitation with a child.

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

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

11 (16) “State” means a state of the United States, the District of Columbia, Puerto Rico, and
12 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
13 of the United States.

14 (17) “Uniformed service” means:

15 (A) active and reserve components of the Army, Navy, Air Force, Marine Corps,
16 or Coast Guard of the United States;

17 (B) the Merchant Marine, the commissioned corps of the Public Health Service,
18 or the commissioned corps of the National Oceanic and Atmospheric Administration of the
19 United States; or

20 (C) the National Guard.

21 **Comment**

22 The definitional provisions establish one umbrella term, “custodial responsibility,” for
23 issues relating to custody, including the authority often referred to in other state custody law as
24 physical custody, visitation, and legal custody. The provisions also establish three sub-categories
25 of custodial responsibility: “physical custody,” “decision-making responsibility,” and “limited

1 contact.” The term “physical custody” is meant to refer broadly to the authority to live with,
2 spend time with, or visit with a child. States often use a number of terms that fall within this
3 definition, including “primary physical custody,” “secondary physical custody,” “visitation,” and
4 “possessory conservatorship.” All these are meant to be subsumed under the term “physical
5 custody.”
6

7 In contrast, the term “decision-making responsibility” means the authority to make
8 decisions about a child’s life. This term is meant to encompass some of the authority referred to
9 in many states as “legal custody,” including the authority reasonably necessary to make
10 decisions, such as the ability to enroll the child in a local school, to deal with medical care, and
11 to allow the child to engage in routine activities and travel. It is not intended, however, to
12 encompass all the decision-making authority that generally comes with legal custody, such as
13 giving a minor permission to marry, or choosing a child’s religion. The authority to make these
14 important decisions remains with the parents who have permanent custody of the child, and
15 under the DPVCA may not be transferred to other persons during deployment.
16

17 The term “limited contact” is a term created for use in the DPVCA. It refers to a form of
18 visitation with the child that may be assigned to nonparents, which is a more limited form of
19 visitation than courts usually grant to parents or grandparents outside the deployment context.
20 Limited contact allows the service member to sustain his or her relationship with the child
21 through designating either a family member or other person with whom the child has a close
22 relationship to spend time with the child during the service member’s absence. The limited
23 contact definition allows the possibility that it may be granted to minors as well as adults. Thus
24 a minor half-sibling or step-sibling of the child could be granted limited contact during a service
25 member’s deployment.
26

27 Elsewhere in the definitional section, the DPVCA uses the term “parent.” This term is
28 not meant to be limited to relationships established through marriage, adoption, or blood, but is
29 intended to encompass any of the means by which the law of the forum state allows parenting
30 relationships to be established. For example, if the law of the relevant state allows parenthood to
31 be established based on the fact that a child has been born or conceived within a civil union, this
32 would meet the DPVCA’s definition of parent. Similarly, the term may encompass persons who
33 are not biological parents but have relied on assisted reproductive technology to bear a child, if
34 their relationship to the child would be recognized as a parental relationship under the law of the
35 state. In addition, persons who meet the definition of a de facto or psychological parents could
36 also fall within the definition of “parent,” if the law of the relevant state recognizes such a status
37 as a parental status]. The term “family member” is also meant to be broadly defined in order to
38 encompass any of the ways that family relationships may be established under the relevant state
39 law.
40

41 The Uniform Law Commission recognizes that there will be instances in which two of
42 the children’s parents may be deployed at the same time. In these circumstances, each parent
43 will simultaneously meet the definition of a “deploying parent” and an “other parent” for
44 purposes of the DPVCA.

1 The definition of “deploying parent” requires notice of deployment. This notice need not
2 be pursuant to the issuance of official orders. Instead, notice is intended to be construed broadly,
3 and includes being advised by the commanding officer or a designated representative that a
4 determination of deployment had been made and that orders of deployment will be issued.

5
6 **SECTION 103. REMEDIES FOR NONCOMPLIANCE.** In addition to any other
7 relief provided by law of this state other than this [act], if a court finds that a party to a
8 proceeding under this [act] has acted in bad faith or intentionally failed to comply with this [act]
9 or a court order issued under this [act], the court may assess attorney’s fees and costs of the
10 opposing party and order other appropriate relief.

11 **SECTION 104. JURISDICTION.**

12 (a) A court may hear and resolve proceedings under this [act].

13 (b) A court may issue an order regarding custodial responsibility under this [act] only if
14 the court has jurisdiction pursuant to [cite to the Uniform Child Custody Jurisdiction and
15 Enforcement Act]. If the court has issued a temporary order regarding custodial responsibility
16 pursuant to [Article] 3, [[the residence of the deploying parent is not changed by reason of the
17 deployment]] [[the deploying parent is deemed to reside in this state]] for the purposes of [the
18 Uniform Child Custody Jurisdiction and Enforcement Act] during the duration of the
19 deployment.

20 (c) If a court in another state has issued a temporary order regarding custodial
21 responsibility as a result of current or impending deployment, [[the residence of the deploying
22 parent is not changed by reason of the deployment]] [[the deploying parent is deemed to reside in
23 the other state]] for the purposes of [cite to the Uniform Child Custody Jurisdiction and
24 Enforcement Act] during the duration of the deployment.

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

1 **Comment**

2 This section has two primary functions. First, it declares that courts may enter an order
3 pursuant to the DPVCA only if the court has jurisdiction pursuant to the Uniform Child Custody
4 Jurisdiction and Enforcement Act (UCCJEA). Second, the section provides that [[once the
5 forum court has entered a temporary order for custodial responsibility on account of a service
6 member’s deployment,]] for purposes of the UCCJEA, the deploying parent’s residence will not
7 be changed on account of the deployment. An exception is made allowing for the exercise of
8 temporary jurisdiction by a court in the case of emergencies.
9

10 **SECTION 105. NOTICE REQUIRED OF DEPLOYING PARENT.**

11 (a) Except as otherwise provided in subsection (b), a deploying parent shall notify the
12 other parent of the deployment, in a record, not later than [seven] days after receiving notice of
13 deployment. Each parent shall provide the other with any plan for fulfilling the parents’ share of
14 custodial responsibility during deployment as soon as reasonably possible after a plan is
15 developed.

16 (b) If an existing court order prohibits the disclosure of the address or contact information
17 of the other parent, a notification of deployment may be made only to the court. The court shall
18 forward the notification to the other parent. The court shall keep confidential the address or
19 contact information of the other parent.

20 (c) A court may find failure by a deploying parent, without good cause, to notify the other
21 parent of deployment or a plan for custodial responsibility in a timely manner to be contrary to
22 the best interest of the child in a future proceeding regarding custodial responsibility between the
23 parents.

24 **Comment**

25 As suggested in the Comment to Section 102, the term “notice of deployment” is
26 intended to be construed broadly to encourage parents to communicate as soon as possible after a
27 service member learns of deployment. This notice need not be pursuant to the issuance of official
28 orders. It is intended to include a service member’s having been advised by the commanding
29 officer or a designated representative that a determination of deployment has been made and that
30 orders of deployment will be issued. Furthermore, notice of deployment should be construed as

1 given where the commanding officer or a designated representative has informed the service
2 member that there is a reasonable possibility that the service member or the service member's
3 unit will be deployed in the next few months.

4
5 **SECTION 106. DUTY TO NOTIFY OF CHANGE OF ADDRESS.**

6 (a) Except as otherwise provided in subsection (b), a parent or nonparent to whom
7 custodial responsibility has been assigned or awarded during deployment pursuant to [Article] 2
8 or 3 shall notify the deploying parent and any other individual with custodial responsibility of
9 any change of mailing address or residence until the assignment or award is terminated. The
10 parent or nonparent shall also provide the notice to any court that has issued an existing custody
11 or child support order concerning the child.

12 (b) If an existing court order prohibits the disclosure of the address or contact information
13 of an individual with custodial responsibility, a notification of change of mailing address or
14 residence under subsection (a) may be made only to the court. The court shall keep confidential
15 the mailing address or residence of the individual with custodial responsibility or limited contact.

16 **[ARTICLE] 2**

17 **AGREEMENT REGARDING CUSTODY DURING DEPLOYMENT**

18 **Comment**

19
20 Article 2 provides procedures for out-of-court resolution of issues of custodial
21 responsibility that arise on the deployment of a service member. This Article is intended to
22 encourage and facilitate the parents mutually agreeing to a custody arrangement during
23 deployment. Most of the Article governs the form and substance of agreements between the
24 parents regarding custody during deployment. In the event that a deploying parent is the only
25 parent of the child, section 209 allows custody arrangements during the service member's
26 deployment to be made unilaterally by power of attorney.

27
28 **SECTION 201. AGREEMENT REGARDING CUSTODY OR LIMITED**
29 **CONTACT.**

30 (a) The parents of a child may enter into a written agreement to assign all or a portion of

1 the deploying parent’s custodial responsibility during deployment in the form of physical
2 custody, decision making responsibility, or limited contact. The agreement must be signed by
3 both parents.

4 (b) An agreement must:

5 (1) designate the agreement as temporary;

6 (2) identify the nature of the deployment that is the basis for the agreement;

7 (3) specify the allocation of physical custody among the deploying parent, the
8 other parent, and any nonparent, if applicable;

9 (4) specify any decision-making responsibility that will accompany the
10 assignment of custodial responsibility;

11 (5) specify any assignment of limited contact to a nonparent;

12 (6) if the order provides for sharing physical custody or limited contact between
13 the other parent and a nonparent, provide a process to resolve any dispute that may arise;

14 (7) specify the frequency, duration, and means, including electronic means, by
15 which the deploying parent will have contact with the child, and any role to be played by the
16 other parent in facilitating the contact;

17 (8) specify the contact between the deploying parent and child during the time the
18 deploying parent is on leave or is otherwise available;

19 (9) provide that the agreement will terminate according to the procedures under
20 [Article] 4; and

21 (10) if the agreement must be filed pursuant to Section 209, specify which parent
22 must file the agreement.

Comment

1 Both Sections 201 and 207 provide that written agreements may be used to determine
2 issues of custodial responsibility during deployment, and set out the form of such agreements.
3 The failure of an agreement to meet these formal requirements, however, should not ordinarily
4 be sufficient to invalidate such an agreement.
5

6 **SECTION 202. ASSIGNMENT OF PHYSICAL CUSTODY.** An agreement between
7 the deploying parent and the other parent may assign all or a portion of the deploying parent's
8 physical custody to the other parent, to a nonparent who is an adult family member of the child,
9 or to a nonparent who is an adult with whom the child has a close and substantial relationship, or
10 to be shared among these persons.

11 **SECTION 203. ASSIGNMENT OF DECISION-MAKING RESPONSIBILITY.** An
12 agreement between the deploying parent and the other parent that assigns physical custody may
13 also assign decision-making responsibility to the individual to whom physical custody is
14 assigned.

15 **SECTION 204. ASSIGNMENT OF LIMITED CONTACT.** An agreement between
16 the deploying parent and the other parent may assign a portion of the deploying parent's
17 custodial responsibility in the form of limited contact to a nonparent who is a family member of
18 the child or an individual with whom the child has a close and substantial relationship.

Comment

19
20 As noted in the Comment to Section 102, the DPVCA contemplates that limited contact
21 with the child may be assigned to minors as well as adults. Thus a minor half-sibling or step-
22 sibling of the child could be assigned limited contact during a service member's deployment.
23

24 **SECTION 205. NATURE OF ASSIGNMENT.** An assignment of physical custody,
25 decision-making responsibility, or limited contact made pursuant to this [article] derives from the
26 deploying parent's custodial responsibility and creates no independent right to physical custody,
27 decision-making responsibility, or limited contact in the individual to whom it is assigned. The

1 assignment made pursuant to this [article] is temporary and terminates following the conclusion
2 of deployment of the deploying parent according to the procedures under [Article] 4, unless by
3 court order the assignment has not been terminated before that time.

4 **SECTION 206. STANDING TO ENFORCE ASSIGNMENT TO NONPARENT.** A
5 nonparent assigned physical custody, decision-making responsibility, or limited contact has
6 standing to enforce the assignment until the assignment has been terminated under [Article] 4 or
7 by court order.

8 **SECTION 207. MODIFICATION OF AGREEMENT.**

9 (a) Before a deploying parent deploys, the parents may modify an agreement for the
10 assignment physical custody, decision-making responsibility, or limited contact. The
11 modification must be in writing and signed by both parents.

12 (b) During the deployment of a deploying parent, the parents may, in a record, modify an
13 agreement for the assignment of physical custody, decision-making responsibility, or limited
14 contact.

15 **Comment**

16 Section 207 allows an agreement to be modified during deployment in a record rather
17 than requires that the modification be in the form of a signed agreement because of the practical
18 difficulties that may attend obtaining a signed agreement while a service member is deployed.

19
20 **SECTION 208. POWER OF ATTORNEY.** If there is no other parent living, or if an
21 existing court order prohibits contact between the child and the other parent, the deploying
22 parent, by power of attorney, may assign:

23 (1) physical custody, or physical custody and decision-making responsibility, to a
24 nonparent who is an adult family member of the child or an adult with whom the child has a
25 close and substantial relationship; or

1 (2) limited contact to a nonparent who is a family member of the child or an individual
2 with whom the child has a close and substantial relationship.

3 **SECTION 209. FILING AGREEMENT OR POWER OF ATTORNEY WITH**
4 **COURT.** Not later than [seven] days after execution of an agreement or power of attorney
5 under this [article], the document must be filed with a court that has entered an existing order on
6 custodial responsibility or child support concerning the child. The case number and heading of
7 the existing custody responsibility or child support case shall be provided to the court with the
8 agreement or power of attorney.

9 **[ARTICLE] 3**

10 **JUDICIAL PROCEDURE FOR ESTABLISHING CUSTODY DURING DEPLOYMENT**

11 **Comment**

12
13 Where the parents are not in agreement on custody or visitation issues, Article 3 provides
14 for judicial resolution of these issues following a service member's notice of deployment. Due
15 to the short time frame that often applies between notice of deployment and actual deployment,
16 the DPVCA does not require that the parents attempt to reach an agreement pursuant to Article 2
17 before filing in court pursuant to this Article. Instead, Articles 2 and 3 are alternative
18 mechanisms by which these custody issues can be resolved. Article 3 provides for a set of
19 expedited procedures for entry of a temporary custody order during deployment. It also declares
20 that no permanent custody order can be entered pending or during deployment without the
21 service member's consent.

22
23 **SECTION 301. MOTION FOR TEMPORARY CUSTODY ORDER.** After a
24 deploying parent receives notice of deployment, and during the deployment, either parent may
25 file a motion regarding custodial responsibility of a child during deployment. The motion shall
26 be filed in an existing action for custodial responsibility of the child or, if there is no existing
27 action, in a new action for custodial responsibility.

28 **SECTION 302. EXPEDITED HEARING.** If a request regarding custodial
29 responsibility is filed before a deploying parent deploys, the court shall conduct an expedited

1 deployment. In crafting this provision, DPVCA seeks to give significant deference to past
2 decrees and agreements in which issues of custody during deployment had already been
3 considered and resolved. At the same time, it seeks to balance the value of leaving settled
4 matters settled against the recognition that in some circumstances past determinations may no
5 longer be in the best interest of the child. This Section reflects that balance.
6

7 This provision gives somewhat more deference to custody provisions in prior judicial
8 decrees than in settlement agreements. To overturn the former, the challenger must first meet the
9 state's standard for modifying a judicial decree regarding custodial responsibility. In most states,
10 this standard requires that there be a showing of a substantial or material change of
11 circumstances that was not foreseeable at the time the prior judicial decree was entered. Only if
12 a challenger meets that showing, as well as overcomes the presumption that the previous decree
13 was in the best interest of the child, may the court modify the earlier decree. In contrast, the
14 challenger of custody provisions in a past agreement needs only to overcome the presumption
15 that these provisions are in the best interest of the child.
16

17 **SECTION 305. TEMPORARY NATURE OF CUSTODY ORDER.** After a
18 deploying parent receives notice of deployment and during the deployment, a court may issue a
19 temporary order for custodial responsibility if permitted by the Servicemembers Civil Relief Act,
20 50 U.S.C. Appx. §§521-522, but may not issue a permanent order regarding custodial
21 responsibility without the consent of the deploying parent.

22 **SECTION 306. GRANT OF PHYSICAL CUSTODY TO NONPARENT.** On the
23 motion of a deploying parent, and in accordance with law of this state other than this [act], a
24 court may confer physical custody of a child on a nonparent who is an adult family member of
25 the child or an adult with whom the child has a close and substantial relationship if:

26 (1) the grant of physical custody is for an amount of time agreed to by the other parent or
27 equal to or less than either:

28 (A) the amount of time granted to the deploying parent in an existing permanent
29 custody order, except that the court may add unusual travel time necessary to transport the child;

30 or

31 (B) in the absence of an existing permanent custody order, the amount of time that

1 the deploying parent habitually cared for the child before being notified of deployment, except
2 that the court may add unusual travel time necessary to transport the child; and

3 (2) it is in the best interest of the child.

4 **Comment**

5 Section 306 allows the court, at the request of a deploying parent, to grant the service
6 member's portion of custodial responsibility in the form of physical custody to an adult
7 nonparent who is either a family member or with whom the child has a close and substantial
8 relationship. The DPVCA establishes no presumption for an award of custodial responsibility
9 between such a nonparent and the other parent of the child. Instead, the court is to make the
10 decision based on best interest of the child standard. In making this determination, it is expected
11 that the court will incorporate any presumptions in other state law against awarding custodial
12 responsibility to perpetrators of domestic violence or to sexual offenders, or to those who reside
13 with them.

14
15 While Section 306 provides that a grant of physical custody to a nonparent should
16 generally be limited to the amount of time that the deploying parent previously had physical
17 custody of the child, the court may vary this because of the practicalities of travel relating to the
18 temporary custody arrangement. For example, if a service member ordinarily had physical
19 custody of the child on Thursday evenings and every other Sunday, the court's grant of this same
20 custody schedule to the service member's parents would be impracticable if they lived several
21 hours away. In such a situation, the court might, for example, allow the grandparents custody of
22 the child every other weekend, in order to account for the difficulties of their making shorter
23 visits given the distance to be traveled.

24
25 **SECTION 307. GRANT OF DECISION-MAKING RESPONSIBILITY.** A court
26 that grants physical custody may also grant decision-making responsibility to the same
27 individual.

28 **Comment**

29 This section allows the court to transfer some portion of the service member's authority
30 to make decisions for a child to a nonparent granted physical custody during deployment. Most
31 states presume that some day-to-day decision making authority automatically accompanies a
32 court's grant of physical custody of a child. Section 307 allows the court, in addition, to transfer
33 some of the decision making responsibility ordinarily considered to be part of legal custody,
34 including the ability to enroll the child in a local school, to deal with medical care, to enroll the
35 child in extracurricular activities, and to authorize the child to travel. The Commission believes
36 that it is important to allow transfer of such decision-making responsibility where a service
37 member is deployed overseas and may not be available to make these decisions.

1 under [Article] 4 or by court order.

2 **SECTION 311. CONTENTS OF TEMPORARY CUSTODY ORDER.** A temporary

3 order for custodial responsibility must:

4 (1) designate the order as temporary;

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

6 (3) specify the allocation of physical custody among the deploying parent, the other
7 parent, and any nonparent, if applicable;

8 (4) specify any decision-making responsibility that will accompany the assignment of
9 custodial responsibility;

10 (5) specify any award of limited contact to a nonparent;

11 (6) if the order provides for shared physical custody between the other parent and a
12 nonparent, or grants physical custody to the other parent and limited contact to a nonparent,
13 provide a process to resolve any dispute that may arise;

14 (7) provide for liberal contact between the deploying parent and the child to the extent
15 not contrary to the best interest of the child;

16 (8) provide for liberal contact between the deploying parent and child during the time the
17 deploying parent is on leave or is otherwise available to the extent not contrary to the best
18 interest of the child; and

19 (9) provide that the order will terminate by further order of the court following the
20 conclusion of deployment according to the procedures under [Article] 4.

21 **SECTION 312. ORDER FOR CHILD SUPPORT.** If a court has issued an order for
22 physical custody under this [article], or an agreement regarding physical custody has been
23 executed under [Article] 2, the court, subject to appropriate jurisdiction under [the Uniform

1 Interstate Family Support Act], may:

2 (1) enter a temporary order for child support consistent with law of this state other than
3 this [act]; and

4 (2) require the deploying parent to enroll the child to receive military dependent benefits,
5 to the extent the child is eligible.

6 **Comment**

7
8 Section 312 recognizes that the change of custody during deployment will in many
9 instances require adjustment in child support, as a service member who normally is a custodial
10 parent now will appropriately pay support to the other parent or another custodian. Accordingly,
11 the Section provides that a court determining custodial responsibility during deployment may
12 also enter a temporary order for child support if, based on underlying state law, it would
13 otherwise have jurisdiction to enter such an order.

14
15 **SECTION 313. MODIFYING OR TERMINATING ASSIGNMENT OR GRANT**
16 **OF CUSTODIAL RESPONSIBILITY TO NONPARENT.**

17 (a) Except as otherwise provided in subsection (b), on motion of a deploying or other
18 parent, the court shall modify or terminate an agreement for or grant of physical custody or
19 decision-making responsibility made pursuant to this [act] if the modification or termination is
20 consistent with this [Act] and the court finds it is in the best interest of the child.

21 (b) On motion of a deploying parent, the court shall terminate an order or agreement for
22 limited contact with the child.

23 **Comment**

24
25 Section 313 provides that a court may modify temporary orders and agreements
26 concerning custodial responsibility if it is in the best interest of the child. However, on motion
27 of the deploying parent, the court should terminate an order or agreement for limited contact with
28 the child without conducting an inquiry concerning the child's best interests. Because limited
29 contact is intended to further the deploying parent's relationship with the child, it is the Uniform
30 Law Commission's view that it should be solely within the deploying parent's discretion to
31 terminate this contact.

[ARTICLE] 4

RETURN FROM DEPLOYMENT

Comment

Article 4 sets out procedures governing the termination of the temporary custody arrangement following the service member’s return from deployment. In doing so, the DPVCA seeks to balance the service member’s interest in quickly and easily reestablishing custody against the possibility that resumption of custody may no longer be in the child’s best interest because of changes in the child’s or service member’s situation. Concerns about the child’s best interest resulted in rejection in the DPVCA of an automatic reversion to the previous custody order following the service member’s return. However, the act still seeks to make reversion as easy as possible for the service member without risking the child’s best interests.

The Article sets out three parallel procedures by which a service member can seek the return of custody. Section 402 sets out an abridged procedure for terminating a temporary custody agreement when the parents and any nonparent with temporary physical custody agree to the resumption of the permanent custody arrangement. Section 403 sets out a consent procedure for terminating a temporary custody order that applies when both parents and any nonparent with temporary physical custody agree to the resumption of the permanent custody arrangement. Where no agreement to the resumption of the permanent custody arrangement is reached between the parties, Section 404 provides for resolution of contested cases concerning custodial responsibility. In cases in which the court determines that resumption of the permanent custody arrangement is not appropriate under the standards of Section 404, Section 405 sets out further procedures for resolving the issue of permanent custody of the child.

SECTION 401. VISITATION BEFORE TERMINATION OF TEMPORARY

ORDER. 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 deploying parent has a right of reasonable contact with the child, which may include more time than the deploying parent spent with the child before entry of the temporary order.

SECTION 402. CONSENT PROCEDURE FOR TERMINATING TEMPORARY CUSTODY ESTABLISHED BY AGREEMENT.

(a) At any time following return from deployment a temporary agreement for custodial responsibility under [Article 2] may be terminated by an agreement signed by the deploying parent, the other parent, and any nonparent to whom custodial responsibility was assigned.

1 (b) Once an agreement to terminate has been signed by all parties designated under
2 subsection (a), the temporary arrangement for custodial responsibility terminates on the date
3 specified in the agreement to terminate. If no date is specified, the temporary agreement for
4 custodial responsibility terminates on the date the agreement to terminate has been signed by all
5 the parties.

6 **SECTION 403. CONSENT PROCEDURE FOR TERMINATING TEMPORARY**
7 **CUSTODY ESTABLISHED THROUGH COURT ORDER.**

8 (a) At any time following return from deployment the deploying parent, the other parent,
9 and any nonparent to whom custodial responsibility was granted may file with the court a
10 stipulation to terminate a temporary order for custodial responsibility issued under [Article] 3.

11 (b) Following the filing of a stipulation under subsection (a) to terminate a temporary
12 order for custodial responsibility under [Article] 3, the court shall issue an order terminating the
13 temporary order on the date specified in the stipulation. If no date is specified, the court shall
14 issue an order terminating the temporary custody order immediately.

15 **SECTION 404. ADJUDICATED PROCEDURE FOR TERMINATING**
16 **TEMPORARY CUSTODY ESTABLISHED BY AGREEMENT OR COURT ORDER.**

17 (a) Not later than six months following return from deployment, a deploying parent may
18 file with the court a motion to terminate an agreement or order for custodial responsibility under
19 [Article] 2 or 3. The motion must be filed in an existing action for custodial responsibility of the
20 child if or, if no action exists, in a new action for custodial responsibility. The motion must
21 specify a date no sooner than [30] days after the motion is filed on which the deploying parent
22 requests the agreement or order be terminated.

23 (b) Unless an existing order requires that the other parent's or nonparent's address or

1 contact information not be disclosed, the deploying parent shall mail a copy of a motion under
2 subsection (a) to the other parent and to any nonparent to whom physical custody has been
3 assigned or awarded during deployment. If an existing court order prohibits the disclosure of the
4 address or contact information of the other parent or nonparent, the motion may be filed only
5 with the court. The court shall forward the motion to the other parent or nonparent. The court
6 shall keep confidential the address or contact information of the other parent or nonparent.

7 (c) If no timely objection is filed by the other parent or any nonparent to whom physical
8 custody has been assigned or awarded, the court shall issue an order terminating a temporary
9 agreement or order on the date specified in the motion under subsection (a). If no date is
10 specified, the court shall enter an order terminating the temporary agreement or order
11 immediately.

12 (d) If either the other parent or a nonparent to whom physical custody has been assigned
13 or awarded objects to a motion under subsection (a), the court shall hold an expedited hearing,
14 unless the deploying parent waives an expedited hearing.

15 (e) Unless the court finds that granting a motion under subsection (a) to terminate a
16 temporary agreement or order is likely to cause the child [substantial] harm, the court shall issue
17 an order terminating the agreement or order.

18 (f) If the court determines that granting a motion under subsection (a) to terminate the
19 temporary agreement or order is likely to cause the child substantial harm, the court shall order
20 the agreement or order to remain in effect or modify the agreement or order to provide for the
21 best interest of the child.

22 **Comment**

23 Failure of a service member to meet the six-month limit that Section 404 establishes for
24 the filing a motion seeking to terminate the temporary custody arrangement would not, of course,

1 bar the service member from seeking resumption of custody of the child; the service member
2 simply would not be able to avail himself or herself of the special provisions for return of
3 custody set out in Article 4. Instead, such a service member would need to follow the procedures
4 and meet the substantive standards that apply generally to child custody matters in the state.
5

6 Subsection (c) refers to a timely objection being filed to the deploying parent’s motion.
7 What constitutes a timely objection will be determined by other state law.
8

9 Subsection (e) provides that the court should grant a deploying parent’s motion to
10 terminate the temporary custody arrangement unless it finds that doing so is likely to cause the
11 child substantial harm. This standard is a higher standard for the individual challenging the
12 termination than the “best interest of the child” standard generally used to determine custody
13 matters. The higher standard represents a compromise between the automatic rescission of
14 temporary custody arrangements on the return from deployment established in some state
15 statutes and the standard “best interest” test generally applied in custody cases. This standard
16 recognizes that transfer of custody during deployment was intended to be temporary, and to
17 terminate on the service member’s return. The permanent custody arrangement is therefore
18 expected to resume unless doing so would be likely to cause substantial harm to the child.
19

20 The likelihood of substantial harm standard in subsection (e) means that there may be
21 some cases in which the court authorizes return of custodial responsibility to deploying parent
22 when the arrangement is not in the child’s best interest. According to the DPVCA, in the
23 absence of a [risk of harm,] such a challenge to the permanent custody arrangement is
24 appropriately dealt with under the standard custody procedures established by state law. The
25 challenger may still move for a change of custody in the best interests of the child; however, the
26 deploying parent should be able to resume the previous custody arrangement unless and until the
27 other parent proves his or her case.
28

29 **SECTION 405. POST-HEARING PROCEDURE TO MODIFY OR RESUME**

30 **PERMANENT CUSTODY.** If the court determines that terminating a temporary agreement or
31 order for custodial responsibility is likely to cause the child substantial harm the following rules
32 apply:

33 (1) Any individual with standing may file a motion to modify a permanent order of
34 custodial responsibility, or to enter a permanent order if there is no existing permanent order. If
35 the motion is filed not later than six months after the court’s determination to not terminate the
36 temporary order for custodial responsibility, the court shall hold an expedited hearing, unless the
37 deploying parent waives an expedited hearing.

1 (2) Not later than one year after the court’s determination not to terminate the temporary
2 order or agreement, the deploying parent may file another motion to terminate the temporary
3 order or agreement if the deploying parent can demonstrate a [substantial] change of
4 circumstances and that return to the permanent custody arrangement [is in the best interest of the
5 child] [is not likely to cause the child substantial harm]. The court shall hold an expedited
6 hearing, unless the deploying parent waives an expedited hearing.

7 **Comment**

8 Section 405 provides for procedures that can be invoked by either parent to settle issues
9 of custodial responsibility if the court has previously denied termination of the temporary
10 custody arrangement pursuant to Section 404. The procedures set out in Section 405 provide for
11 expedited resolution of permanent custody of the child if the service member agrees. Section
12 405 also allows the deploying parent again to seek termination of the temporary custody order on
13 a showing of change of circumstances and that **[insert standard]**.

14
15 **[ARTICLE] 5**

16 **CONSIDERATIONS OF PARENT’S SERVICE IN CUSTODY PROCEEDINGS WHEN**
17 **NO DEPLOYMENT IS PENDING**

18 **Comment**

19 Article 5, in contrast to other articles of the Act, does not directly concern custody
20 procedures connected with a service members’ deployment. Instead, it seeks to amend the
21 state’s general standard for child custody to guard against the possibility that courts will use past
22 or possible future deployment as a negative factor in determining custody by service members
23 without serious consideration of whether the child’s interests were or would be truly harmed by
24 such deployments.

25
26 **SECTION 501. GENERAL CONSIDERATION IN CUSTODY PROCEEDING OF**
27 **PARENT’S MILITARY SERVICE.** A court may not consider a parent’s military service,
28 including past deployment or possible future deployment, as a negative factor in determining the
29 best interest of the child in a proceeding for custodial responsibility of a child of a service
30 member, except in a proceeding for temporary custody under [Article] 2 or 3. The court may

1 consider the material effect on the child of the parent’s past or possible future absence because of
2 deployment.

3 **Comment**

4 This section prohibits the court from using a parent’s military service, including past
5 deployment or possible future deployment, itself as a negative factor in determining the best
6 interests of the child. In contrast, however, the material effects on the child of the parent’s past
7 or possible future service may be considered.

8
9 *Legislative Note: It is contemplated that this Article will be codified separately from the rest of*
10 *the Act, as part of the general custody provisions of the state.*

11
12 **[ARTICLE] 6**

13 **MISCELLANEOUS PROVISIONS**

14 **SECTION 601. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
15 applying and construing this uniform act, consideration must be given to the need to promote
16 uniformity of the law with respect to its subject matter among states that enact it.

17 **SECTION 602. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
18 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
19 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,
20 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
21 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
22 U.S.C. Section 7003(b).

23 **SECTION 603. TRANSITION PROVISION.** The passage of this [act] does not affect
24 the validity of temporary court orders concerning custodial responsibility during deployment that
25 were entered before the effective date of this [act].

26 **SECTION 604. EFFECTIVE DATE.** This [act] takes effect