

DRAFT
FOR DISCUSSION ONLY

VISITATION AND CUSTODY ISSUES AFFECTING MILITARY PERSONNEL AND THEIR FAMILIES ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For February 25 – 27, 2011 Drafting Committee Meeting

Without Prefatory Note or Comments

With Style Committee Edits

Copyright ©2010
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

February 18, 2011

DRAFTING COMMITTEE ON VISITATION AND CUSTODY ISSUES AFFECTING MILITARY PERSONNEL AND THEIR FAMILIES

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

PAUL M. KURTZ, University of Georgia School of Law, 225 Herty Dr., Athens, GA 30602-6012, *Chair*

BARBARA ATWOOD, University of Arizona, James E. Rogers College of Law, 1201 E. Speedway, P.O. Box 210176, Tucson, AZ 85721-0176

EFFIE BEAN COZART, 6075 Poplar Ave., Suite 500, Memphis, TN 38119

THOMAS J. DEADRICK, 315 Main St., P.O. Box 788, Platte, SD 57369

LORIE FOWLKE, 2696 N. University Ave., #220, Provo, UT 84604

KAY KINDRED, William S. Boyd School of Law, University of Nevada, Las Vegas, 4505 S. Maryland Pkwy., Box 451003, Las Vegas, NV 89154-1003

DEBRA H. LEHRMANN, 360th District Court, Family Law Center, 200 W. Weatherford St., 4th Floor, Fort Worth, TX 76196-0282

BRADLEY MYERS, University of North Dakota School of Law, 215 Centennial Dr., Stop 9003, Room 201, Grand Forks, ND 58202-9003

THOMAS C. OWENS, 7804 W. 100th St., Overland Park, KS 66212

ANNE H. REIGLE, Court of Commons Pleas, Kent County Courthouse, 28 The Green, Suite 6, Dover, DE 19901-3602

MAXINE EICHNER, University of North Carolina School of Law, 160 Ridge Rd., Van Hecke-Wettach Hall, CB #3380, Chapel Hill, NC 27599, *Reporter*

EX OFFICIO

ROBERT A. STEIN, University of Minnesota Law School, 229 19th Ave. S., Minneapolis, MN 55455, *President*

GAIL H. HAGERTY, South Central Judicial District, P.O. Box 1013, 514 E. Thayer Ave., Bismark, ND 58502-1013, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

JAMES HIGDON, 1200 Huebner Rd., Suite 200, San Antonio, TX 78230-1201, *ABA Advisor*

JEAN CROWE, Legal Aid Society, 300 Deaderick St., Nashville, TN 37201-1103, *ABA Section Advisor*

MARK E. SULLIVAN, 2626 Glenwood Ave., Suite 195, Raleigh, NC 27608-1366, *ABA Section Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

**VISITATION AND CUSTODY ISSUES AFFECTING MILITARY PERSONNEL AND
THEIR FAMILIES ACT**

TABLE OF CONTENTS

SECTION 101. SHORT TITLE.	1
SECTION 102. DEFINITIONS.....	1
SECTION 103. SANCTIONS.	3
SECTION 201. NOTICE REQUIRED TO NONDEPLOYING PARENT.	3
SECTION 202. EXPEDITED HEARING.....	3
SECTION 203. ELECTRONIC TESTIMONY.....	3
SECTION 204. EFFECT OF PRIOR JUDICIAL DECREE OR AGREEMENT.....	4
SECTION 205. TEMPORARY NATURE OF CUSTODY ORDER.	4
SECTION 206. PROVISIONS OF TEMPORARY CUSTODY ORDER. A.....	4
SECTION 207. ORDER FOR CHILD SUPPORT.....	5
SECTION 208. EFFECT OF DEPLOYMENT ON JURISDICTION.	5
SECTION 301. ASSIGNMENT OF CUSTODIAL RESPONSIBILITY TO INDIVIDUAL OTHER THAN PARENT.....	6
SECTION 302. ASSIGNMENT OF LIMITED CONTACT	7
SECTION 303. NATURE OF ASSIGNED RIGHT.	8
SECTION 304. STANDING TO ENFORCE ASSIGNED RIGHT.....	8
SECTION 305. TERMINATION OF ASSIGNED RIGHT.....	8
SECTION 401. PROCEDURE FOR TERMINATING TEMPORARY CUSTODY ORDER. ...	8
SECTION 402. STANDARD FOR TERMINATING TEMPORARY CUSTODY ORDER. ...	10
SECTION 403. TRANSITION TO PRIOR CUSTODIAL ARRANGMENT.....	10
SECTION 404. VISITATION PRIOR TO TERMINATION OF TEMPORARY ORDER.....	11
SECTION 501. CONSIDERATION OF PAST OR FUTURE DEPLOYMENTS IN CUSTODY PROCEEDING.	11
SECTION 502. CONSIDERATION OF PARENT’S SERVICE IN CUSTODY PROCEEDING	11
SECTION 601. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	12
SECTION 602. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.....	12
SECTION 603. EFFECTIVE DATE.....	12

1 **VISITATION AND CUSTODY ISSUES AFFECTING MILITARY PERSONNEL**
2 **AND THEIR FAMILIES ACT**

3
4 **SECTION 101. SHORT TITLE.** This [act] may be cited as the [Visitation and
5 Custody Issues Affecting Military Personnel and Their Families Act].

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

7 (1) "Child" means a means an individual who has not attained 18 years of age, or an adult
8 son or daughter by birth or adoption.

9 (2) "Close and substantial relationship" means a relationship in which a bond has been
10 forged between a child and an individual other than the parent by regular contact or
11 communication.

12 (3) "Court" means an entity authorized under the law of a State to establish, enforce, or
13 modify a child-custody determination, and which has jurisdiction to do under the law of this
14 State.

15 (4) "Custodial responsibility" means legal custody, physical custody, or visitation rights
16 with respect to a child.

17 (5) "Deploying parent" means an individual:

18 (A) who is:

19 (i) the legal parent of an unemancipated child;

20 (ii) the legal parent of an adult child for whom the parent has custodial
21 responsibility under law of this state other than this act because of mental or physical disability;
22 or

23 (iii) the legal guardian of an unemancipated child for whom custodial
24 responsibility has been determined by court order;

25 (B) is a service member; and

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

2 (4) "Deployment" means the temporary transfer of a service member in compliance with
3 official orders to another location for a period of more than [60] days, during which family
4 members are not authorized to accompany the service member. "Deploy", "deploying", and
5 "deployed" have corresponding meanings.

6 (5) "Family member" means an adult sibling, aunt, uncle, cousin, or grandparent related
7 to a child by blood, adoption, or marriage, and a stepparent of the child.

8 (6) "Limited contact" means the right to take a child for a limited time to a place other
9 than the habitual residence of the child.

10 (7) "Nondeploying parent" means an individual:

11 (A) who is not deployed and has not been notified of his or her own impending
12 deployment; and

13 (B) who in common with the deploying parent is:

14 (i) the legal parent of an unemancipated child;

15 (ii) the legal parent of an adult child for whom the legal parent has
16 custodial responsibility under law of this state other than this act because of mental or physical
17 disability; or

18 (iii) the legal guardian of an unemancipated child for whom custodial
19 responsibility has been determined by court order.

20 (8) "Service member" means a member of:

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

23 (B) the Merchant Marine, the commissioned corps of the Public Health Service,

1 or the commissioned corps of the National Oceanic and Atmospheric Administration of the
2 United States; or

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

4 **SECTION 103. SANCTIONS.** If the court finds that a party to a proceeding under this
5 [act] has acted in bad faith, or otherwise deliberately failed to comply with this [act] or a court
6 order issued under this [act], the court may assess attorney's fees and costs of the opposing party
7 and order any other appropriate sanctions.

8 **SECTION 201. NOTICE REQUIRED TO NONDEPLOYING PARENT.** A
9 deploying parent shall notify the nondeploying parent of deployment not later than [Note: should
10 put number in] days of receiving notice of deployment. If an existing court order requires that
11 the address or contact information of the nondeploying parent not be disclosed, the notification
12 must be made to the court only, which shall forward it to the nondeploying parent. Failure to
13 notify the nondeploying parent is deemed contrary to the best interests of the child.

14 **SECTION 202. EXPEDITED HEARING.** Following a deploying parent's receiving
15 notice of deployment, either parent may request an expedited hearing by the court on any matter
16 pertaining to custodial responsibility. The request shall include the date on which the deployment
17 begins. If the imminent deployment of the parent will have a material effect on the parent's
18 ability, or anticipated ability, to appear in person at a regularly scheduled hearing, the court shall
19 schedule an expedited hearing.

20 **SECTION 203. ELECTRONIC TESTIMONY.** A deploying parent involved in a
21 proceeding pursuant to this [act] who is reasonably unavailable to appear personally may request
22 to participate in the hearing, including giving testimony and providing evidence, through
23 electronic means. The request must be granted if the participation is technologically and

otherwise practicable, and would not create a substantial injustice.

SECTION 204. EFFECT OF PRIOR JUDICIAL DECREE OR AGREEMENT.

(a) In a proceeding seeking entry of an order regarding custodial responsibility following notice of deployment or during deployment the following rules apply:

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

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

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

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

SECTION 205. TEMPORARY NATURE OF CUSTODY ORDER. Following a deploying parent's receiving notice of deployment and for the duration of the deployment, a court with jurisdiction may render a temporary order for custodial responsibility under applicable state law, if the order is in compliance with the Servicemembers Civil Relief Act, 50 U.S.C. Appx. Sections 521, and 522. The court may not render a permanent order regarding custody or visitation without the consent of the deploying parent.

SECTION 206. PROVISIONS OF TEMPORARY CUSTODY ORDER. A

temporary order for custodial responsibility rendered under section 205 must:

(1) designate the order as a temporary order;

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

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

(4) specify the means by which the deploying parent may remain in contact with the child, including by electronic communication, or other available means, and whether the nondeploying parent is required to facilitate this communication;

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

(6) specify any assignment of custodial responsibility pursuant to Section __, including the specific powers that accompany this assignment;

(7) specify any assignment of limited contact to a third party pursuant to Section __;

(8) provide a process to resolve any disputes that may arise between the nondeploying parent and the third party if the order delegates custodial responsibility or limited contact to a third party; and

(9) specify that the order shall terminate, by further order of this court, following the deploying parent's return from deployment.

SECTION 207. ORDER FOR CHILD SUPPORT. If the court renders an order on custodial responsibility under this section, it may, on motion of either parent, the court may:

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

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

SECTION 208. EFFECT OF DEPLOYMENT ON JURISDICTION. The removal

1 of a child from this state following receipt of the child's parent of an order of deployment or
2 during deployment shall be considered a temporary absence for the purposes of the [Uniform
3 Child Custody Jurisdiction and Enforcement Act]. Furthermore, the presence of a child in this
4 state who has been removed from another state following receipt of the child's parent of an order
5 of deployment or during deployment shall be considered a temporary absence from the other
6 state for the purposes of the [Uniform Child Custody Jurisdiction and Enforcement Act]. This
7 section does not prohibit the exercise of temporary emergency jurisdiction by a court of this state
8 under the [Uniform Child Custody Jurisdiction and Enforcement Act].

9 **SECTION 301. ASSIGNMENT OF CUSTODIAL RESPONSIBILITY TO**
10 **INDIVIDUAL OTHER THAN PARENT.**

11 (a) On motion of a deploying parent, the court may assign all or part of the deploying
12 parent's custodial responsibility to an adult family member of the child or an adult with whom
13 the child has a close and substantial relationship, if the assignment is in the best interests of the
14 child. The custodial responsibility assigned to the third party may not exceed the custodial time
15 granted to the deploying parent under an existing permanent order or agreement between the
16 parents, but the court may consider atypical travel time required to transport the child between
17 the nondeploying parent and the third party to whom custodial responsibility is assigned.

18 (b) There is a rebuttable presumption that custodial responsibility will not be assigned to
19 an individual:

20 (i) who has committed an act or acts of domestic violence against a spouse, a
21 child, or a domestic partner;

22 (ii) who is a registered sex offender; or

23 (iii) who lives in the same household with another individual who is either a

1 registered sex offender or who has committed an act of domestic violence against a spouse, a
2 child, or a domestic partner.

3 (c) In assigning custodial responsibility to a third party, the court may assign any of the
4 powers of the deploying parent regarding care, custody, or property of the child.

5 **SECTION 302. ASSIGNMENT OF LIMITED CONTACT.**

6 (a) On the motion of a deploying parent, the court may assign limited contact with the
7 child of a deploying parent to an individual who is either a family member of the child or a
8 person with whom the child has a close and substantial relationship, if allowing the limited
9 contact is in the best interests of the child. Except as otherwise provided in subsection (c), the
10 court shall presume allowing limited contact is in the best interests of the child. This presumption
11 may be rebutted if the court makes specific findings of fact explaining why limited contact is not
12 in the best interests of the child.

13 (b) The period of time assigned for limited contact under subsection (a) may not exceed
14 the amount of custodial time granted to the deploying parent under an existing permanent order
15 or agreement between the parents, but the court may consider atypical travel time required to
16 transport the child between the nondeploying parent and the third party to whom limited contact
17 is assigned.

18 (c) There is a rebuttable presumption that limited contact will not be granted to an
19 individual:

20 (i) who has committed an act or acts of domestic violence against a spouse, a
21 child, or a domestic partner;

22 (ii) who is a registered sex offender; or

23 (iii) who lives in the same household with another individual who is either a

1 registered sex offender or who has committed an act of domestic violence against a spouse, a
2 child, or a domestic partner.

3 **SECTION 303. NATURE OF ASSIGNED RIGHT.** Custodial responsibility or
4 limited contact ordered under this [act] derive from the deploying parent's right to custodial
5 responsibility. Neither this [act] nor a court order assigning custodial responsibility or limited
6 contact creates a separate or permanent rights to custodial responsibility or limited contact.

7 **SECTION 304. STANDING TO ENFORCE ASSIGNED RIGHT.** If the court has
8 delegated custodial responsibility or limited contact to a third party, the third party has standing
9 to enforce the court's order if the deploying parent has not revoked consent to the assignment.

10 **SECTION 305. TERMINATION OF ASSIGNED RIGHT.** On motion of a
11 deploying parent, the court may modify or terminate the assignment of custodial responsibility or
12 limited contact on a showing that a modification or termination is consistent with the best
13 interests of the child and law of this state other than this [act]..

14 **SECTION 401. PROCEDURE FOR TERMINATING TEMPORARY CUSTODY**
15 **ORDER.**

16 (a) On return from deployment, a deploying parent who seeks to terminate a temporary
17 order of custodial responsibility entered under this [act] must file with the court a notice of return
18 and motion to terminate temporary custody order. The notice of return and motion to terminate
19 temporary custody order must state the date on which the temporary order should be terminated,
20 which must be not sooner than [30] days after the is filed. A copy of the notice of return and
21 motion to terminate temporary custody order must be sent to the nondeploying parent unless a
22 court order requires the address or other contact information of the nondeploying parent not be
23 disclosed. If a court order requires the address or contact information of the nondeployng parent

1 not be disclosed, or if the deploying parent is unable to locate the nondeploying parent with
2 reasonable efforts, the notice must be sent to the court only, which shall send it to the
3 nondeploying parent.

4 (b) (1) The notice of return and motion to terminate temporary custody order, below the
5 deploying parent's certificate of service, must contain a paragraph in boldface type stating "I, the
6 undersigned, being first duly sworn, state: I am a parent or guardian of the child in this matter; I
7 have read the Notice of Return and Motion to Terminate Temporary Custody Order and
8 understand its contents; I understand that the court will dissolve the temporary order of custody
9 on the date set out in this notice of return and motion to terminate temporary custody order
10 unless doing so would likely cause the child substantial harm, and that I may object to the notice
11 of return and motion to terminate temporary custody order only for this reason . Understanding
12 all these matters, I consent to this motion and to the termination of the temporary custody order."

13 (2) The paragraph must be followed by a signature line on which the nondeploying parent
14 may sign and verify to demonstrate consent to the motion before a notary public. A
15 nondeploying parent who signs and verifies the paragraph shall file the form with the court and
16 mail a copy to the deploying parent not later than [30] days after the deploying parent files the
17 notice of return and motion to terminate temporary custody order. If the court receives the
18 verified consent, the court shall determine the motion accordingly on an expedited basis.

19 (c) If a nondeploying parent does not file a verified consent pursuant to subsection (b) not
20 later than within [30] days of its filing by the deploying parent, and does not file an objection to
21 the termination of the temporary custody, the court shall treat the notice of return and motion to
22 terminate temporary custody order as unopposed, and shall rule on the motion accordingly on
23 an expedited basis.

(d) If a nondeploying parent or an individual with temporary custodial responsibility files an objection to vacating the temporary custody order not later than [30] days after the filing of notice of return and motion to terminate temporary custody order, or the court otherwise requires a hearing on the motion, the issue shall be heard in an expedited hearing not later than [] days after notice of the motion is served.

SECTION 402. STANDARD FOR TERMINATING TEMPORARY CUSTODY ORDER.

(a) Unless the court finds that termination of a temporary order for custodial responsibility issued pursuant to this [act] is likely to cause the child substantial harm, the court shall terminate the temporary custody order.

(b) If the court finds that terminating a temporary order for custodial responsibility would likely cause the child substantial harm, the court shall order that the temporary order remain in effect until a hearing can be held on the issue of a permanent change of custodial responsibility. A hearing on the issue of a permanent change of custodial responsibility must be held not later than [30] days after the date of the court order extending the temporary order, unless the deploying parent consents to a longer period of time.

(c) The court may not find that terminating a temporary order for custodial responsibility would likely cause the child substantial harm when the harm can be ameliorated through a gradual reversion to the previous arrangement for custodial responsibility. Instead, the court shall order a transition period that allows a gradual reversion to the previous arrangement rather than continue the temporary order.

SECTION 403. TRANSITION TO PRIOR CUSTODIAL ARRANGMENT. As soon as practicable following return from deployment, a deploying parent should discuss with

1 the nondeploying parent or any third party having temporary custodial responsibility any
2 transition needed to resume the prior custodial arrangement, unless a court order prohibits
3 contact between these persons.

4 **SECTION 404. VISITATION PRIOR TO TERMINATION OF TEMPORARY**
5 **ORDER.** Following return from deployment of a deploying parent, a nondeploying parent or
6 third party to whom temporary custodial responsibility has been assigned under this [act] shall
7 provide reasonable contact with the child to the deploying parent until a temporary order for
8 custodial responsibility is terminated or a court with jurisdiction enters an order on custodial
9 responsibility. Reasonable contact is not required if contact is likely to cause the child
10 substantial harm.

11 **SECTION 501. CONSIDERATION OF PAST OR FUTURE DEPLOYMENTS IN**
12 **CUSTODY PROCEEDING.** In a proceeding for custodial responsibility of a child of a service
13 member, whether it is an original proceeding for custody or a proceeding to modify a previous
14 custody order, the court may not consider the past deployment or possible future deployment
15 itself of the service member as a factor in determining the best interests of the child. However,
16 the material effects of the deployment on the child may be considered. This section does not
17 apply to proceedings for a temporary order of custodial responsibility under Section 205 of this
18 [act].

19 **SECTION 502. CONSIDERATION OF PARENT'S SERVICE IN CUSTODY**
20 **PROCEEDING.** In a proceeding for custodial responsibility of a child of a service member,
21 whether it is an original proceeding for custody or a proceeding to modify a previous custody
22 order, other than a proceeding for a temporary order of custodial responsibility under section
23 205 of this [act], the court shall consider the positive effects on a child of having a parent in

1 military service, including the opportunity to live in diverse places and the availability of
2 healthcare to children of service members.

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

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

12 **SECTION 603. EFFECTIVE DATE.** This [act] takes effect