

2013 SENATE JUDICIARY

SB 2122

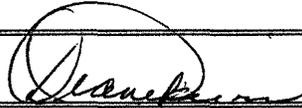
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2122
1/21/2013
Job #17443

Conference Committee

Committee Clerk Signature



Minutes:

Written testimony

Relating to uniformed deployed parent's custody and visitation act. Relating to best interests and welfare of the child factors and limitation on post judgment

Senator David Hogue - Chairman

Judge Gail Hagerty - District Judge - Uniform Law Commissioner - See written testimony.

Senator Hogue - Discusses the Soldier and Sailors Civil Relief Act. He asks if that is preempted by this bill.

Judge Hagerty - Replies that those provisions can be raised and that defense would still be available to a soldier to as it is now.

Senator Hogue - Asks if there has been given any thought to a uniform agreement because individuals who fall under this are typically single parents with little or no access to attorneys.

Judge Hagerty - Responds that the military advisors have told them that the list they have included it of what the agreement should include it would be a very simple thing for them to put together a form.

Senator Lyson - Asks if this has been seen by family law attorneys.

Judge Hagerty - Replies that she did send it regularly the drafts to the family law section of the ND Bar. She also had people from the ABA at every drafting meeting who then sent it out to their membership. They received a great deal of feedback. She remarks that the State Bar Association supports this bill.

Al Dohrman - Deputy Adjutant General of the ND National Guard - Says this bill meets the requirement of taking care of soldiers, airman and their families. He goes on to say this bill addresses soldier readiness and this uniform act takes care of those issues and much more and is one of DOD's top ten quality of life initiatives that they pushing throughout the United States. He said they strongly support this bill. He said anything they can put into place that clearly defines how the family will be taken care of while that service member is deployed take something off the soldier's mind so they can focus on their mission. He

Senate Judiciary Committee
SB 2122
1/21/2013
Page 2

mentions passage of this bill will take care of two bills that are currently in the house so they would remove those other two bills. He said this is a very stressful area for deploying service members and this bill would settle a lot of the issues once and for all.

Lonnie Wagen - Commission of Veterans Affairs of ND - In support of this bill.

Opposition - none

Neutral - none

Close the hearing on SB2122

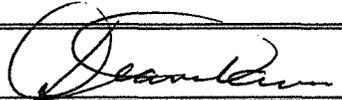
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2122
1/23/2013
Job #17649

Conference Committee

Committee Clerk Signature



Minutes:

Vote

Senator David Hogue - Chairman

Committee work

Committee discusses the way to amend the bill using returned from deployment. Senator Hogue mentions that redeployment is the return from active duty deployment. They continue to discuss if it should be added to additional lines and decide to amend page 8, line 23, 25, 26 and 28 to insert redeployment. Committee discusses that those have talked to want this bill.

Senator Armstrong moves the amendment
Senator Berry seconded
Verbal vote - all yes

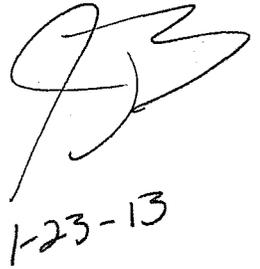
Senator Lyson moves a do pass as amended
Senator Nelson seconded
Vote - 7 yes, 0 no
Motion passes

Senator Nelson will carry

13.0277.01001
Title.02000

Adopted by the Judiciary Committee

January 23, 2013



Handwritten signature and date: 1-23-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2122

Page 8, line 23, after "**deploying**" insert "**or redeploying**"

Page 8, line 25, after "deployment" insert "or redeployment"

Page 8, line 26, after "deployment" insert "or redeployment"

Page 8, line 28, after "deploying" insert "or redeploying"

Renumber accordingly

Date: 1-23-13
Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2122**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0297.01001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S Armstrong Seconded By S Berry

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue			Senator Carolyn Nelson		
Vice Chairman Margaret Sitte			Senator John Grabinger		
Senator Stanley Lyson					
Senator Spencer Berry					
Senator Kelly Armstrong					

Total (Yes) _____ No _____

Absent Verbal vote - All yes

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2122: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2122 was placed on the Sixth order on the calendar.

Page 8, line 23, after "deploying" insert "or redeploying"

Page 8, line 25, after "deployment" insert "or redeployment"

Page 8, line 26, after "deployment" insert "or redeployment"

Page 8, line 28, after "deploying" insert "or redeploying"

Renumber accordingly

2013 HOUSE JUDICIARY

SB 2122

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2122
DATE March 12, 2013
JOB 19766

Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to the Uniformed Deployed Parents Custody and Visitation Act; relating to best interests and welfare of the child factors and limitation on postjudgment modifications; and to provide for application.

Minutes:

Testimony 1,2,3

Chairman Kim Koppelman: Opens the hearing on SB 2122.

Gail Hagerty, District Judge and Uniform Law Commissioner: Testimony and handout #1, see attached. Time on tape 1:02 to 14:20.

Chairman Kim Koppelman: Page 3 new language aren't the exceptions precisely the factors which would be considered if you were allowed to consider and if so then why the prohibition against considering?

Gail Hagerty: What we don't want is for a court to say it would be contrary to the best interest of the child to have the deploying parent have residential responsibility because they might be deployed sometime in the future. We don't want that to work against a parent who is in the military. Nor do we want a court to say it's contrary to the best interest of the child for me to award parenting time or residential responsibility because twice in the past this person has been deployed and it may happen again. The desire is to avoiding having that work against a person when you are going through these factors.

Brigadier General Alan Dohrmann, Deputy Adjutant General ND National Guard: See handout #2 attached. Time on tape 16:21 to 19:48. He also discussed HB 1114 that is being heard in the Senate with the language change of 24 months to match with SB 2122 for the period of deployment. HB 1109 would be defeated. He stated they would see what happens to SB 2122 before they recommend clean up on the other two bills.

Rep. Vicky Steiner: You mentioned 24 months needed correcting, is there a time frame in the previous bill?

BG Dohrmann: To synchronize 1114 and 2122 I think the language should be changed to mere 2122 to all the power of attorney to be in effect for the period of the deployment. We chose 24 months because in the worst case scenario with post mobilization training. Some of our early deployments were deployments of 17 to 22 months. But 2122 also covers this because it doesn't

matter the length of deployment the power of attorney would remain in effect for the period of deployment.

Rep. Randy Boehning: From the time a Guard member gets their notice what is the time period before they are deployed?

BG Dohrmann: It's been 18 to 24 months' notice of a pending deployment. We had cases in 2003 where they had five days' notice.

Rep. Bill Kretschmar: When you talk about deployment is that to a foreign country? Or can it be to some other state in the United States?

BG Dohrmann: It could be domestic mission also. Right now we have the Air Defense Artillery Unit that is alerted for mobilization this spring with the mission to provide air defense over the national capital region. But it is still consider deployment in regard to this legislation.

Chairman Kim Koppelman: This applies to active duty and to guard and reserve people?

BG Dohrmann: That would be correct, any military.

Chairman Kim Koppelman: The active duty military can have these issues to deal with just as someone in the Guard. What are the difference between deployments and longer term of service?

BG Dohrmann: I think the impact of a loved one going down range and a spouse left behind dealing with the family or the person with parental rights dealing with issues, is probably very similar. Ten years ago I would have told you deployments would be much more difficult on Guards families because it was something unusually. The last ten years we can't make that argument anymore. I don't know if the issues are much different for an active duty family the support network may or may not be in this jurisdiction so there may be additional stressors there. The National Guard, the Reserve and the active component work very hard in the family programs to identify what those stressors are and get programs for whatever service you are in to make sure we get them the help they need.

John Jacobsen. North Dakota Veterans Coordinating Council: Handout #3, see attached. Time on tape 24:55 to 25: 52.

Rep. Lois Delmore: Made a do pass motion on SB 2122.

Rep. Diane Larson: Second the motion.

14-0-0

Rep. Lois Delmore: Will carry the bill to the floor.

Date: 3-12-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB2122**

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Larson

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Delmore

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2122, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman)
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2122 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2122

**Testimony on SB2122
before the Senate Judiciary Committee
by District Judge Gail Hagerty
January 21, 2013**

Chair Hogue, Members of the Committee:

I'm Gail Hagerty – a district judge here in Bismarck and a Uniform Law Commissioner. I'm here today to testify in support of Senate Bill 2122, which enacts the Uniform Deployed Parents Custody and Visitation Act. I was privileged to serve on the drafting committee for this Act. The committee met five times over a period of more than two years. At each meeting, there were representatives of the military present to ensure that we understood deployment and its challenges. The Act was read, line by line, at two annual meetings of the Uniform Law Commission and was approved as a Uniform Act by a vote by the states.

The big challenge in drafting this Act was to balance the desire to avoid penalizing military parents because they are being deployed and the need to protect the best interest of the children of deployed parents. Many states, including North Dakota, have enacted statutes with that goal. The Act is well thought out, and covers issues that are not covered in all state statutes. This is an area in which uniformity is desirable, so that those advising deployed parents are able to use a common approach to providing for parenting during deployment and because people are mobile and non-deployed parents and children may well move from state to state during the time a parent is deployed.

To explain the draft, I will briefly touch on the sections and then try to answer any questions you might have.

Section 1 of the Act deals with Section 14-09-06.2, the section of law judges look at when determining the best interest of children. On page three of the bill draft, you will note that language is added to indicate that a court may not consider past deployment or possible future deployment in determining the best interest of a child, but if that deployment has a significant

impact on the child, it may be considered. So just the fact of deployment wouldn't be a consideration, but if there was a child with a particular need for stability the court might consider the possibility of deployment.

Section 2 of the Act amends the provisions for post judgment modifications of primary residential responsibility. It removes the provisions which are replaced by the Act.

Section 3 of the Act is the section which enacts the Uniform Deployed Parents Custody and Visitation Act. Several people have asked me about use of the terms "custody" and "visitation." We've moved away from use of those terms in North Dakota, and that is a good thing. However, because of the way the definitions are drafted and because of the need for uniformity in this area, use of custody and visitation in the title of the Act is not a problem.

Section 14-09.3-01 includes definitions used in the Act. There is a very broad term, "custodial responsibility," which is defined to include all the powers and duties involved in parenting. "Caretaking authority" includes what we would term primary residential responsibility and parenting time. "Decisionmaking authority" is authority to make decisions other than those day-to-day decisions necessary when caring for a child.

Section 14-09.3-02 allows a court to assess reasonable attorney fees and provide other relief if a party acts in bad faith or intentionally fails to comply with the Act.

Section 14-09.3-03 deals with jurisdiction for proceedings under the Act. The military advisors who worked with the drafting committee felt very strongly that subsection 3 provides important protection for deployed parents by indicating the deployed parent's residence is not changed by reason of deployment.

Section 14-09.3-04 requires that a deploying parent notify the other parent of a pending deployment not later than seven days after receiving notice of deployment, if possible. Each parent is then required to provide the other parent with a plan for parenting. I understand that parents who are going to be deployed are required to make such a plan in preparation for

deployment. The section provides for situations where one parent is not allowed to contact the other and indicated notification is not required if the parents live together and both know of the deployment.

In discussing this section with family law practitioners, it was suggested that this section be amended to require not only notice of deployment but notice of return. I think that could be accomplished by amending line 25 on page 8 to read:

. . . a deploying parent shall notify in a record the other parent of a pending deployment **or return from deployment** . . .

Section 14-09.3-05 requires notification of change of address, unless there is a court order prohibiting such notice. In that case, the court handles notifications.

Sections 14-09.3-06 to 14-09.3-10 are sections which provide for the preferred method of making parenting arrangements – an agreement of the parents. The agreements must be in writing and on page 10 of the bill draft, under subsection 3 of Section 14-09.3-06, there is a listing of what must be included in the agreements.

The agreements are temporary and a party who is given parenting rights has standing to enforce the agreements. (Section 14-09.3-07) The agreements may be modified by agreement of the parents. (Section 14-09.3-08) A deploying parent may delegate parenting rights and duties by a power of attorney, if there is no other person with parenting rights. (Section 14-09.3-09)

If there is a court order dealing with parenting, a copy of the agreement would be filed with the court. (Section 14-09.3-10)

Sections 14-09.3-11 to 14-09.3-21 provide for situations where a court order is required to deal with parenting during deployment.

Section 14-09.3-12 allows either parent to file a motion regarding custodial responsibility

during deployment. If a motion is filed, the court must conduct an expedited hearing. (Section 14-09.3-13) At these hearings, electronic testimony would be allowed. (Section 14-09.3-14) If there is a prior judicial order or agreement dealing with parenting in event of deployment, it is binding unless circumstances are such that a modification would have been permitted in other parenting cases or it is contrary to the best interest of the child. (Section 14-09.3-15)

Section 14-09.3-16 allows the court to grant caretaking to a nonparent if it is in the best interest of the child. If the other parent does not agree, the court may not grant more parenting time that the deploying parent had by court order, or habitually spent with the child before deployment.

The court could also grant part of the deployed parent's decisionmaking authority to a nonparent.

Section 14-09.3-17 allows a court to grant limited contact, which is a relatively short visit, with nonparents to allow the child to continue to have a relationship with the deploying parent's family or household members. This might be a grant of time to spend with step-siblings or a step-parent, or grandparents.

The parenting authority granted by the court is temporary and does not create a continuing right. (Section 14-09.3-18) Section 14-09.3-19, on page 14 of the bill draft, indicates what an order entered under this Act must include. The orders must be designated as temporary. They must provide for liberal communication between the deploying parent and child and liberal contact between the parent and child when a deploying parent is on leave.

Section 14-09.3-20 would allow the court to enter a temporary order for child support under other law of the state.

Section 14-09.3-21 deals with modifying or terminating a grant of custodial responsibility.

Sections 14-09.3-22 to 14-09.3-25 deal with termination of the temporary parenting

arrangements when deployment is concluded.

Section 14-09.3-22 would probably be the most common method of terminating the arrangements. Agreements between parties would terminate when the agreement indicates it terminates, or when the parties agree, or 60 days after the returning parent gives notice.

Section 14-09.3-23 allows the parties to consent to termination of a temporary court order.

Section 14-09.3-24 provides that if there is a period of time between return from deployment and return to the regular parenting situation, the deploying parent is allowed parenting time.

Section 14-09.3-25 states that if there is a temporary court order, and there hasn't been an agreement to terminate, it terminates 60 days after notice of return.

I'd be happy to attempt to answer any questions you may have about the Act.

Proposed amendment:

Amend page 8, line 25 to read:

parent shall notify in a record the other parent of a pending deployment or return from deployment



Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

Contact Us: 312.450.6600

Deployed Parents Custody and Visitation Act Summary

UNIFORM DEPLOYED PARENTS CUSTODY AND VISTATION ACT

-SUMMARY-

The increased deployment of service members has raised difficult child custody issues that profoundly affect both children's welfare and service members' ability to serve their country efficiently. Stories of service members struggling to balance their military duties with their parental duties have in recent years become commonplace. Because a significant proportion of service members are single parents, the Department of Defense indicates that problems related to child custody and visitation while the parent is deployed detrimentally impact the overall war effort and can impact the ability for service members to complete assigned missions.

The only existing federal statutory protection for single-parent service members is the Servicemembers Civil Relief Act ("SCRA"), which governs the general legal rights of a deploying service member. Under the SCRA, judges must grant stays of legal proceedings, including custody proceedings, when military service materially affects the service member's ability to participate in the proceedings. Yet such stays are mandatory only for the first 90 days after deployment. After that time passes, entry of such stays are discretionary and are often overridden by the interests of the affected children in having custody issues resolved. Furthermore, the SCRA provides no procedures to facilitate entry of a temporary custody arrangement for the many service members who recognize that it is in their child's interests for custody to be settled during their absence. Additionally, the SCRA give courts no guidance regarding how to balance service members' interests against other relevant interests, including the best interests of the child.

The SCRA notwithstanding, issues of child custody and visitation are the proper province of state law under the constructs of federalism. Currently, state courts vary considerably in their approach to custody issues on a parent's deployment. Many courts will grant custody to the other natural parent for the duration of the deployment, even over the wishes of the deploying parent. Other courts will grant custody to the person that the service member wishes to designate as custodian, such as a grandparent. Further, at the end of a deployment, some courts have been reluctant to return custody to the deploying parent – even when the custody arrangement during deployment had been deemed only "temporary" – unless the service member can show the child to be significantly worse off living with the other parent.

To resolve these difficult issues, some states have enacted statutes that address custody issues facing service members. However, most of these statutes address only a small range of issues that impact cases involving the custody rights of service members. Furthermore, these statutes vary considerably with one another in both their scope and substantive provisions. Finally, many states have adopted no statutes on this issue.

The result is a system of considerable variability among states when it comes to the treatment of deploying parents, and in which deploying parents are sometimes penalized for their service without clear gains for their children. Because of the mobile nature of military service, and because a child's other parent will often live in or move to a different state than the deployed service member, bringing the child with them, there are many times that custody issues relating to the child of a service member will involve two or more states.

Responding to the critical need for uniformity and for efficient and just resolution of custody issues when a service member deploys, the Uniform Law Commission drafted the Uniform Deployed Parents Custody and Visitation Act (UDPCVA) in 2012. The goal of the UDPCVA is to facilitate expeditious and fair disposition of cases involving the custody rights of a member of the military. The UDPCVA ultimately promotes a just balance of interests—protecting the rights of the service member, the other parent, and above all the best interest of the children involved.

The UDPCVA is organized into five articles. Article 1 contains definitions and provisions that apply generally to custody matters of service members. It includes a notice provision requiring parents to communicate about custody and visitation issues as soon as possible after a service member learns of deployment. Another provision in this article integrates with the Uniform Child Custody Jurisdiction and Enforcement Act to declare the residence of the deploying parent not changed by reason of the deployment. The article also provides that when imminent deployment is not an issue, a court may not use a parent's past deployment or possible future deployment itself as a negative factor in determining the best interests of the child during a custody proceeding.

Articles 2 and 3 apply to custody issues that arise on notice of and during deployment. Article 2 sets out an easy procedure for parents who agree to a custody arrangement during deployment to resolve these issues by an out-of-court agreement. In the absence of the parents reaching an agreement, Article 3 provides for an expedited resolution of a custody arrangement in court. Article 3 also declares that no permanent custody order can be entered before or during deployment without the service member's consent.

Article 4 governs termination of the temporary custody arrangement following the service member's return from deployment. This article contains one set of procedures that applies when the parents mutually agree that a temporary custody agreement should be terminated; another set applies when the parents mutually agree that a temporary custody order entered by a court should be terminated; a third set applies when the parents reach no agreement regarding the termination of the temporary custody arrangement and require a court to resolve whether a return to the permanent custody arrangement is appropriate. Finally, Article 5 contains an effective date provision, a transition provision, and boilerplate provisions common to all uniform acts.

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WHY STATES SHOULD ADOPT THE UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) addresses the wide variability in the ways that states handle child custody and visitation issues that arise when service members are deployed. Because of the mobile nature of military service, and because a child's other parent will often live in or move to a different state than the deployed service member, bringing the child with them, there are many times that these custody issues involve two or more states. Yet different states now apply very different substantive law and court procedures from one another when custody issues arise on a parent's deployment. The resulting patchwork of rules makes it difficult for the parents to resolve these important issues quickly and fairly, hurts the ability of deploying parents to serve the country effectively, and interferes with the best interest of children.

The UDPCVA provides uniform, expeditious, and fair disposition of cases involving the custody rights of a member of the military. The UDPCVA ensures a proper balance of interests—protecting the rights of the service member, the other parent, and above all the best interest of the children involved.

Among its attributes that will improve state law, the UDPCVA:

- Encourages and facilitates mutual agreement between parents to a custody arrangement during deployment
- Provides a set of expedited procedures for entry of a temporary custody order during deployment
- Integrates with the Uniform Child Custody Jurisdiction and Enforcement Act, and declares the residence of the deploying parent not changed by reason of the deployment, thus protecting against jurisdictional litigation
- Allows the court, at the request of a deploying parent, to grant the service member's portion of custodial responsibility in the form of caretaking authority to an adult nonparent who is either a family member or with whom the child has a close and substantial relationship when it serves the child's best interest
- Declares that no permanent custody order can be entered before or during deployment without the service member's consent
- Guards against the possibility that courts will use past or possible future deployment as a negative factor in determining custody by service members without serious consideration of whether the child's best interest was or would be truly compromised by such deployment

/

**Testimony on SB2122
before the House Judiciary Committee
by District Judge Gail Hagerty
March 12, 2013**

Chair Koppelman, Members of the Committee:

I'm Gail Hagerty – a district judge here in Bismarck and a Uniform Law Commissioner.

I'm here today to testify in support of Senate Bill 2122, which enacts the Uniform Deployed Parents Custody and Visitation Act. I was privileged to serve on the drafting committee for this Act. The committee met five times over a period of more than two years. At each meeting, there were representatives of the military present to ensure that we understood deployment and its challenges. The Act was read, line by line, at two annual meetings of the Uniform Law Commission and was approved as a Uniform Act by a vote by the states.

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To explain the draft, I will briefly touch on the sections and then try to answer any questions you might have.

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deployment in determining the best interest of a child, but if that deployment has a significant impact on the child, it may be considered. So just the fact of deployment wouldn't be a consideration, but if there was a child with a particular need for stability the court might consider the possibility of deployment.

Section 2 of the Act amends the provisions for post judgment modifications of primary residential responsibility. It removes the provisions which are replaced by the Act.

Section 3 of the Act is the section which enacts the Uniform Deployed Parents Custody and Visitation Act. Several people have asked me about use of the terms "custody" and "visitation." We've moved away from use of those terms in North Dakota, and that is a good thing. However, because of the way the definitions are drafted and because of the need for uniformity in this area, use of custody and visitation in the title of the Act is not a problem.

Section 14-09.3-01 includes definitions used in the Act. There is a very broad term, "custodial responsibility," which is defined to include all the powers and duties involved in parenting. "Caretaking authority" includes what we would term primary residential responsibility and parenting time. "Decisionmaking authority" is authority to make decisions other than those day-to-day decisions necessary when caring for a child.

Section 14-09.3-02 allows a court to assess reasonable attorney fees and provide other relief if a party acts in bad faith or intentionally fails to comply with the Act.

Section 14-09.3-03 deals with jurisdiction for proceedings under the Act. The military advisors who worked with the drafting committee felt very strongly that subsection 3 provides important protection for deployed parents by indicating the deployed parent's residence is not changed by reason of deployment.

Section 14-09.3-04 requires that a deploying parent notify the other parent of a pending deployment not later than seven days after receiving notice of deployment, if possible. Each

parent is then required to provide the other parent with a plan for parenting. I understand that parents who are going to be deployed are required to make such a plan in preparation for deployment. The section provides for situations where one parent is not allowed to contact the other and indicated notification is not required if the parents live together and both know of the deployment.

In discussing this section with family law practitioners, it was suggested that this section be amended to require not only notice of deployment but notice of return. An amendment was added in the Senate to make that change.

Section 14-09.3-05 requires notification of change of address, unless there is a court order prohibiting such notice. In that case, the court handles notifications.

Sections 14-09.3-06 to 14-09.3-10 are sections which provide for the preferred method of making parenting arrangements – an agreement of the parents. The agreements must be in writing and on page 10 of the bill draft, under subsection 3 of Section 14-09.3-06, there is a listing of what must be included in the agreements.

The agreements are temporary and a party who is given parenting rights has standing to enforce the agreements. (Section 14-09.3-07) The agreements may be modified by agreement of the parents. (Section 14-09.3-08) A deploying parent may delegate parenting rights and duties by a power of attorney, if there is no other person with parenting rights. (Section 14-09.3-09)

If there is a court order dealing with parenting, a copy of the agreement would be filed with the court. (Section 14-09.3-10)

Sections 14-09.3-11 to 14-09.3-21 provide for situations where a court order is required to deal with parenting during deployment.

Section 14-09.3-12 allows either parent to file a motion regarding custodial responsibility

during deployment. If a motion is filed, the court must conduct an expedited hearing. (Section 14-09.3-13) At these hearings, electronic testimony would be allowed. (Section 14-09.3-14) If there is a prior judicial order or agreement dealing with parenting in event of deployment, it is binding unless circumstances are such that a modification would have been permitted in other parenting cases or it is contrary to the best interest of the child. (Section 14-09.3-15)

Section 14-09.3-16 allows the court to grant caretaking to a nonparent if it is in the best interest of the child. If the other parent does not agree, the court may not grant more parenting time that the deploying parent had by court order, or habitually spent with the child before deployment.

The court could also grant part of the deployed parent's decisionmaking authority to a nonparent.

Section 14-09.3-17 allows a court to grant limited contact, which is a relatively short visit, with nonparents to allow the child to continue to have a relationship with the deploying parent's family or household members. This might be a grant of time to spend with step-siblings or a step-parent, or grandparents.

The parenting authority granted by the court is temporary and does not create a continuing right. (Section 14-09.3-18) Section 14-09.3-19, on page 14 of the bill draft, indicates what an order entered under this Act must include. The orders must be designated as temporary. They must provide for liberal communication between the deploying parent and child and liberal contact between the parent and child when a deploying parent is on leave.

Section 14-09.3-20 would allow the court to enter a temporary order for child support under other law of the state.

Section 14-09.3-21 deals with modifying or terminating a grant of custodial responsibility.

Sections 14-09.3-22 to 14-09.3-25 deal with termination of the temporary parenting arrangements when deployment is concluded.

Section 14-09.3-22 would probably be the most common method of terminating the arrangements. Agreements between parties would terminate when the agreement indicates it terminates, or when the parties agree, or 60 days after the returning parent gives notice.

Section 14-09.3-23 allows the parties to consent to termination of a temporary court order.

Section 14-09.3-24 provides that if there is a period of time between return from deployment and return to the regular parenting situation, the deploying parent is allowed parenting time.

Section 14-09.3-25 states that if there is a temporary court order, and there hasn't been an agreement to terminate, it terminates 60 days after notice of return.

I'd be happy to attempt to answer any questions you may have about the Act.



Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

Contact Us: 312.450.6600

Deployed Parents Custody and Visitation Act Summary

UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

-SUMMARY-

The increased deployment of service members has raised difficult child custody issues that profoundly affect both children's welfare and service members' ability to serve their country efficiently. Stories of service members struggling to balance their military duties with their parental duties have in recent years become commonplace. Because a significant proportion of service members are single parents, the Department of Defense indicates that problems related to child custody and visitation while the parent is deployed detrimentally impact the overall war effort and can impact the ability for service members to complete assigned missions.

The only existing federal statutory protection for single-parent service members is the Servicemembers Civil Relief Act ("SCRA"), which governs the general legal rights of a deploying service member. Under the SCRA, judges must grant stays of legal proceedings, including custody proceedings, when military service materially affects the service member's ability to participate in the proceedings. Yet such stays are mandatory only for the first 90 days after deployment. After that time passes, entry of such stays are discretionary and are often overridden by the interests of the affected children in having custody issues resolved. Furthermore, the SCRA provides no procedures to facilitate entry of a temporary custody arrangement for the many service members who recognize that it is in their child's interests for custody to be settled during their absence. Additionally, the SCRA give courts no guidance regarding how to balance service members' interests against other relevant interests, including the best interests of the child.

The SCRA notwithstanding, issues of child custody and visitation are the proper province of state law under the constructs of federalism. Currently, state courts vary considerably in their approach to custody issues on a parent's deployment. Many courts will grant custody to the other natural parent for the duration of the deployment, even over the wishes of the deploying parent. Other courts will grant custody to the person that the service member wishes to designate as custodian, such as a grandparent. Further, at the end of a deployment, some courts have been reluctant to return custody to the deploying parent – even when the custody arrangement during deployment had been deemed only "temporary" – unless the service member can show the child to be significantly worse off living with the other parent.

To resolve these difficult issues, some states have enacted statutes that address custody issues facing service members. However, most of these statutes address only a small range of issues that impact cases involving the custody rights of service members. Furthermore, these statutes vary considerably with one another in both their scope and substantive provisions. Finally, many states have adopted no statutes on this issue.

The result is a system of considerable variability among states when it comes to the treatment of deploying parents, and in which deploying parents are sometimes penalized for their service without clear gains for their children. Because of the mobile nature of military service, and because a child's other parent will often live in or move to a different state than the deployed service member, bringing the child with them, there are many times that custody issues relating to the child of a service member will involve two or more states.

Responding to the critical need for uniformity and for efficient and just resolution of custody issues when a service member deploys, the Uniform Law Commission drafted the Uniform Deployed Parents Custody and Visitation Act (UDPCVA) in 2012. The goal of the UDPCVA is to facilitate expeditious and fair disposition of cases involving the custody rights of a member of the military. The UDPCVA ultimately promotes a just balance of interests—protecting the rights of the service member, the other parent, and above all the best interest of the children involved.

The UDPCVA is organized into five articles. Article 1 contains definitions and provisions that apply generally to custody matters of service members. It includes a notice provision requiring parents to communicate about custody and visitation issues as soon as possible after a service member learns of deployment. Another provision in this article integrates with the Uniform Child Custody Jurisdiction and Enforcement Act to declare the residence of the deploying parent not changed by reason of the deployment. The article also provides that when imminent deployment is not an issue, a court may not use a parent's past deployment or possible future deployment itself as a negative factor in determining the best interests of the child during a custody proceeding.

Articles 2 and 3 apply to custody issues that arise on notice of and during deployment. Article 2 sets out an easy procedure for parents who agree to a custody arrangement during deployment to resolve these issues by an out-of-court agreement. In the absence of the parents reaching an agreement, Article 3 provides for an expedited resolution of a custody arrangement in court. Article 3 also declares that no permanent custody order can be entered before or during deployment without the service member's consent.

Article 4 governs termination of the temporary custody arrangement following the service member's return from deployment. This article contains one set of procedures that applies when the parents mutually agree that a temporary custody agreement should be terminated; another set applies when the parents mutually agree that a temporary custody order entered by a court should be terminated; a third set applies when the parents reach no agreement regarding the termination of the temporary custody arrangement and require a court to resolve whether a return to the permanent custody arrangement is appropriate. Finally, Article 5 contains an effective date provision, a transition provision, and boilerplate provisions common to all uniform acts.

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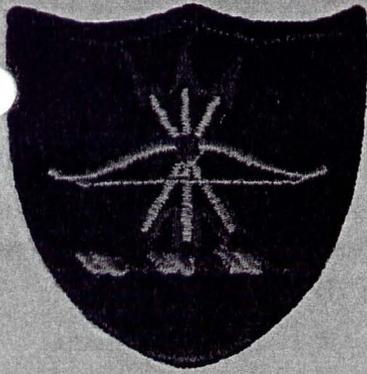
WHY STATES SHOULD ADOPT THE UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) addresses the wide variability in the ways that states handle child custody and visitation issues that arise when service members are deployed. Because of the mobile nature of military service, and because a child's other parent will often live in or move to a different state than the deployed service member, bringing the child with them, there are many times that these custody issues involve two or more states. Yet different states now apply very different substantive law and court procedures from one another when custody issues arise on a parent's deployment. The resulting patchwork of rules makes it difficult for the parents to resolve these important issues quickly and fairly, hurts the ability of deploying parents to serve the country effectively, and interferes with the best interest of children.

The UDPCVA provides uniform, expeditious, and fair disposition of cases involving the custody rights of a member of the military. The UDPCVA ensures a proper balance of interests—protecting the rights of the service member, the other parent, and above all the best interest of the children involved.

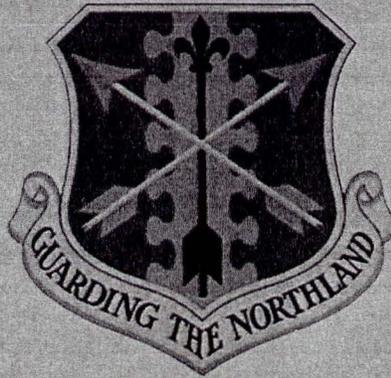
Among its attributes that will improve state law, the UDPCVA:

- Encourages and facilitates mutual agreement between parents to a custody arrangement during deployment
- Provides a set of expedited procedures for entry of a temporary custody order during deployment
- Integrates with the Uniform Child Custody Jurisdiction and Enforcement Act, and declares the residence of the deploying parent not changed by reason of the deployment, thus protecting against jurisdictional litigation
- Allows the court, at the request of a deploying parent, to grant the service member's portion of custodial responsibility in the form of caretaking authority to an adult nonparent who is either a family member or with whom the child has a close and substantial relationship when it serves the child's best interest
- Declares that no permanent custody order can be entered before or during deployment without the service member's consent
- Guards against the possibility that courts will use past or possible future deployment as a negative factor in determining custody by service members without serious consideration of whether the child's best interest was or would be truly compromised by such deployment



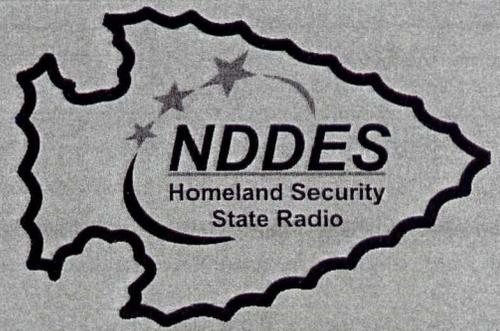
Army National Guard

“The Straight Arrows”



Air National Guard

“The Happy Hooligans”



*Department of
Emergency Services
Homeland Security &
State Radio*

The
***Office of the
Adjutant General***

*Testimony of
Brigadier General Alan Dohrmann
Deputy Adjutant General*

before the

*House Judiciary
Committee
March 12, 2013*

SENATE BILL 2122

**TESTIMONY OF
BRIGADIER GENERAL ALAN DOHRMANN
THE DEPUTY ADJUTANT GENERAL
BEFORE THE
JUDICIARY COMMITTEE
MARCH 12, 2013
SENATE BILL 2122**

Mr. Chairman and Members of the Committee:

I am Brigadier General Alan Dohrmann, Deputy Adjutant General for the North Dakota National Guard. I am testifying in support to Senate Bill 2122.

Senate Bill 2122 is comprehensive legislation that addresses many issues that we, as military members, face when preparing for deployment. The Office of the Adjutant General submitted two piece of legislation this session which addresses a couple of the issues that SB 2122 also works to resolve. First, this committee heard HB 1114, which would provide for the ability to delegate of parental authority for twenty-four months for the case of a deploying parent, rather than the six month period provided in law. Also, HB 1109 provided for a process in law, which allows a service member to transfer visitation rights. Both of these issues are addressed in this legislation. Because of its comprehensive nature, we prefer SB 2122. We have worked with the committee chairmen on both of our bills – HB 1114 and HB1109; they are being held pending the outcome of SB 2122 to ensure they are synchronized or, if appropriate, not passed into law.

Readiness is critical for the success of our military mission. When service members deploy, they need to focus on the mission at hand. Pending care, custody and visitation issues are huge stressors for the service members and they are distractions from the mission. When you are distracted from the mission, it could mean mission failure and someone getting hurt. The process created by SB 2122 will enhance our ability to be ready for deployment.

The fact that a deployment has, or may occur, will not be considered when determining the best interests of the child. The direct results from the deployment may be considered, but the deployment itself would not. It also provides a process for parents and care givers to work together to put an acceptable plan in place in cases of deployments. This Bill allows service members to deploy with peace of mind that their children are being cared for in a safe and secure environment, considering the rights and equities of all parties involved. We strongly recommend a “do pass” vote.

I am happy to take any questions that the committee may have.

NORTH DAKOTA VETERANS COORDINATING COUNCIL

My name is John Jacobsen. I am a member of the Legislative Committee of the North Dakota Veterans Coordinating Council. The Coordinating Council is made up of 15 members, 3 from each of the five veterans' organizations in North Dakota.

American Legion

AMVETS

Disabled American Veterans

Veterans of Foreign Wars

Vietnam Veterans of America

It is the policy of the Coordinating Council to support legislation that will benefit the welfare of the members of the Armed Forces. The committee **MUST** concur totally, that is all 15 members must agree on the legislation to be supported or else it does not get the support.

In this case, I have been instructed to recommend to this legislative committee that a "DO PASS" on SB 2122 is supported by the Veterans Coordinating Council.