CHAPTER 14-09.3
UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

14-09.3-01. (102) Definitions.

1. "Adult" means an individual who has attained eighteen years of age or an emancipated minor.
2. "Caretaking authority" means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access, and visitation.
3. "Child" means:
   a. An unemancipated individual who has not attained eighteen years of age; or
   b. An adult son or daughter by birth or adoption, or under law of this state other than this chapter, who is the subject of a court order concerning custodial responsibility.
4. "Court" means a tribunal authorized under law of this state other than this chapter to make, enforce, or modify a decision regarding custodial responsibility.
5. "Custodial responsibility" includes all powers and duties relating to caretaking authority and decisionmaking authority for a child. The term includes physical custody, legal custody, parenting time, right to access, visitation, and authority to grant limited contact with a child.
6. "Decisionmaking authority" means the power to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority.
7. "Deploying parent" means a service member, who is deployed or has been notified of impending deployment and is:
   a. A parent of a child under law of this state other than this chapter; or
   b. An individual who has custodial responsibility for a child under law of this state other than this chapter.
8. "Deployment" means the movement or mobilization of a service member for more than ninety days but less than eighteen months pursuant to uniformed service orders that:
   a. Are designated as unaccompanied;
   b. Do not authorize dependent travel; or
   c. Otherwise do not permit the movement of family members to the location to which the service member is deployed.
9. "Family member" means a sibling, aunt, uncle, cousin, stepparent, or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state other than this chapter.
10. "Limited contact" means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the residence of the child.
11. "Nonparent" means an individual other than a deploying parent or other parent.
12. "Other parent" means an individual who, in common with a deploying parent, is:
    a. A parent of a child under law of this state other than this chapter; or
    b. An individual who has custodial responsibility for a child under law of this state other than this chapter.
13. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
14. "Return from deployment" means the conclusion of a service member's deployment as specified in uniformed service orders.
15. "Service member" means a member of a uniformed service.
16. "Sign" means, with present intent to authenticate or adopt a record:
    a. To execute or adopt a tangible symbol; or
    b. To attach to or logically associate with the record an electronic symbol, sound, or process.

17. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
18. "Uniformed service" means:
    a. Active and reserve components of the army, navy, air force, marine corps, or coast guard of the United States;
    b. The United States merchant marine;
    c. The commissioned corps of the United States public health service;
    d. The commissioned corps of the national oceanic and atmospheric administration of the United States; or
    e. The national guard of a state.

14-09.3-02. (103) Remedies for noncompliance.

In addition to other remedies under law of this state other than this chapter, if a court finds that a party to a proceeding under this chapter has acted in bad faith or intentionally failed to comply with this chapter or a court order issued under this chapter, the court may assess reasonable attorney's fees and costs against the party and order other appropriate relief.

14-09.3-03. (104) Jurisdiction.

1. A court may issue an order regarding custodial responsibility under this chapter only if the court has jurisdiction under chapter 14-14.1.
2. If a court has issued a temporary order regarding custodial responsibility pursuant to sections 14-09.3-11 through 14-09.3-21, the residence of the deploying parent is not changed by reason of the deployment for the purposes of chapter 14-14.1 during the deployment.
3. If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to sections 14-09.3-07 through 14-09.3-10, the residence of the deploying parent is not changed by reason of the deployment for the purposes of chapter 14-14.1.
4. If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed by reason of the deployment for the purposes of chapter 14-14.1.
5. This section does not prevent a court from exercising temporary emergency jurisdiction under chapter 14-14.1.

14-09.3-04. (105) Notification required of deploying or redeploying parent.

1. Except as otherwise provided in subsection 4 and subject to subsection 3, a deploying parent shall notify in a record the other parent of a pending deployment or redeployment not later than seven days after receiving notice of deployment or redeployment unless reasonably prevented from doing so by the circumstances of service. If the circumstances of service prevent giving notification within the seven days, the deploying or redeploying parent shall give the notification as soon as reasonably possible.
2. Except as otherwise provided in subsection 4 and subject to subsection 3, each parent shall provide in a record the other parent with a plan for fulfilling that parent's share of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after notification of deployment is given under subsection 1.
3. If a court order currently in effect prohibits disclosure of the address or contact information of the other parent, notification of deployment under subsection 1, or notification of a plan for custodial responsibility during deployment under subsection 2, may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

4. Notification in a record under subsection 1 or 2 is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.
5. In a proceeding regarding custodial responsibility, a court may consider the reasonableness of a parent's efforts to comply with this section.

14-09.3-05. (106) Duty to notify of change of address.

1. Except as otherwise provided in subsection 2, an individual to whom custodial responsibility has been granted during deployment pursuant to sections 14-09.3-07 through 14-09.3-10 or sections 14-09.3-11 through 14-09.3-21 shall notify the deploying parent and any other individual with custodial responsibility of a child of any change of the individual's mailing address or residence until the grant is terminated. The individual shall provide the notice to any court that has issued a custody or child support order concerning the child which is in effect.
2. If a court order currently in effect prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a notification under subsection 1 may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.

14-09.3-06. (201) Form of agreement.

1. The parents of a child may enter into a temporary agreement under sections 14-09.3-07 through 14-09.3-10 granting custodial responsibility during deployment.
2. An agreement under subsection 1 must be:
   a. In writing; and
   b. Signed by both parents and any nonparent to whom custodial responsibility is granted.
3. Subject to subsection 4, an agreement under subsection 1, if feasible, must:
   a. Identify the destination, duration, and conditions of the deployment that is the basis for the agreement;
   b. Specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent;
   c. Specify any decisionmaking authority that accompanies a grant of caretaking authority;
   d. Specify any grant of limited contact to a nonparent;
   e. If under the agreement custodial responsibility is shared by the other parent and a nonparent, or by other nonparents, provide a process to resolve any dispute that may arise;
   f. Specify the frequency, duration, and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact, and the allocation of any costs of contact;
   g. Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;
   h. Acknowledge that any party's child support obligation cannot be modified by the agreement, and that changing the terms of the obligation during deployment requires modification in the appropriate court;
   i. Provide that the agreement will terminate according to the procedures under sections 14-09.3-22 through 14-09.3-25 after the deploying parent returns from deployment; and
   j. If the agreement must be filed pursuant to section 14-09.3-10, specify which parent is required to file the agreement.
4. The omission of any of the items specified in subsection 3 does not invalidate an agreement under this section.

14-09.3-07. (202) Nature of authority created by agreement.

1. An agreement under sections 14-09.3-07 through 14-09.3-10 is temporary and terminates pursuant to sections 14-09.3-22 through 14-09.3-25 after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under section 14-09.3-08. The agreement does not create an independent, continuing right to caretaking authority, decisionmaking authority, or limited contact in an individual to whom custodial responsibility is given.
2. A nonparent who has caretaking authority, decisionmaking authority, or limited contact by an agreement under sections 14-09.3-07 through 14-09.3-10 has standing to enforce the agreement until it has been terminated by court order, by modification under section 14-09.3-08, or under sections 14-09.3-22 through 14-09.3-25.

14-09.3-08. (203) Modification of agreement.

1. By mutual consent, the parents of a child may modify an agreement regarding custodial responsibility made pursuant to sections 14-09.3-07 through 14-09.3-10.
2. If an agreement is modified under subsection 1 before deployment of a deploying parent, the modification must be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.
3. If an agreement is modified under subsection 1 during deployment of a deploying parent, the modification must be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

14-09.3-09. (204) Power of attorney.

A deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state other than this chapter, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power.

14-09.3-10. (205) Filing agreement or power of attorney with court.

An agreement or power of attorney under sections 14-09.3-07 through 14-09.3-10 must be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect concerning the child who is the subject of the agreement or power. The case number and heading of the pending case concerning custodial responsibility or child support must be provided to the court with the agreement or power.

14-09.3-11. (301) Definition.

In sections 14-09.3-11 through 14-09.3-21, "close and substantial relationship" means a relationship in which a significant bond exists between a child and a nonparent.

14-09.3-12. (302) Proceeding for temporary custody order.

1. After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue a temporary order granting custodial responsibility unless prohibited by the federal Servicemembers Civil Relief Act [50 U.S.C. appendix sections 521 and 522]. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.
2. At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility of a child during deployment. The motion must be filed in a pending proceeding for custodial responsibility in a court with jurisdiction under section 14-09.3-03 or, if there is no pending proceeding in a court with jurisdiction under section 14-09.3-03, in a new action for granting custodial responsibility during deployment.

14-09.3-13. (303) Expedited hearing.

If a motion to grant custodial responsibility is filed under subsection 2 of section 14-09.3-12 before a deploying parent deploys, the court shall conduct an expedited hearing.

14-09.3-14. (304) Testimony by electronic means.

In a proceeding under sections 14-09.3-11 through 14-09.3-21, a party or witness who is not reasonably available to appear personally may appear, provide testimony, and present evidence by electronic means unless the court finds good cause to require a personal appearance.

14-09.3-15. (305) Effect of prior judicial order or agreement.

In a proceeding for a grant of custodial responsibility pursuant to sections 14-09.3-11 through 14-09.3-21, the following rules apply:

1. A prior judicial order designating custodial responsibility in the event of deployment is binding on the court unless the circumstances meet the requirements of law of this state other than this chapter for modifying a judicial order regarding custodial responsibility.
2. The court shall enforce a prior written agreement between the parents for designating custodial responsibility in the event of deployment, including an agreement executed under sections 14-09.3-07 through 14-09.3-10, unless the court finds that the agreement is contrary to the best interests of the child.

14-09.3-16. (306) Grant of caretaking or decisionmaking authority to nonparent.

1. On motion of a deploying parent and in accordance with the laws of this state other than this chapter, if it is in the best interests of the child, a court may grant caretaking authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship.
2. Unless a grant of caretaking authority to a nonparent under subsection 1 is agreed to by the other parent, the grant is limited to an amount of time not greater than:
   a. The amount of time granted to the deploying parent under a permanent custody order, but the court may add unusual travel time necessary to transport the child; or
   b. In the absence of a permanent custody order that is currently in effect, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, but the court may add unusual travel time necessary to transport the child.
3. A court may grant part of a deploying parent's decisionmaking authority, if the deploying parent is unable to exercise that authority, to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship. If a court grants the authority to a nonparent, the court shall specify the decisionmaking powers granted, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel.

14-09.3-17. (307) Grant of limited contact.

On motion of a deploying parent, and in accordance with the laws of this state other than this chapter, unless the court finds that the contact would be contrary to the best interests of the child, a court shall grant limited contact to a nonparent who is a family member of the child or an individual with whom the child has a close and substantial relationship.

14-09.3-18. (308) Nature of authority created by temporary custody order.

1. A grant of authority under sections 14-09.3-11 through 14-09.3-21 is temporary and terminates under sections 14-09.3-22 through 14-09.3-25 after the return from deployment of the deploying parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to caretaking authority, decisionmaking authority, or limited contact in an individual to whom it is granted.

2. A nonparent granted caretaking authority, decisionmaking authority, or limited contact under sections 14-09.3-11 through 14-09.3-21 has standing to enforce the grant until it is terminated by court order or under sections 14-09.3-22 through 14-09.3-25.

14-09.3-19. (309) Content of temporary custody order.

1. An order granting custodial responsibility under sections 14-09.3-11 through 14-09.3-21 must:
   a. Designate the order as temporary; and
   b. Identify to the extent feasible, the destination, duration, and conditions of the deployment.
2. If applicable, an order for custodial responsibility under sections 14-09.3-11 through 14-09.3-21 must:
   a. Specify the allocation of caretaking authority, decisionmaking authority, or limited contact among the deploying parent, the other parent, and any nonparent;
   b. If the order divides caretaking or decisionmaking authority between individuals, or grants caretaking authority to one individual and limited contact to another, provide a process to resolve any dispute that may arise;
   c. Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interests of the child, and allocate any costs of communications;
   d. Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless contrary to the best interests of the child;
   e. Provide for reasonable contact between the deploying parent and the child after return from deployment until the temporary order is terminated, even if the time of contact exceeds the time the deploying parent spent with the child before entry of the temporary order; and
   f. Provide that the order will terminate pursuant to sections 14-09.3-22 through 14-09.3-25 after the deploying parent returns from deployment.

14-09.3-20. (310) Order for child support.

If a court has issued an order granting caretaking authority under sections 14-09.3-11 through 14-09.3-21, or an agreement granting caretaking authority has been executed under sections 14-09.3-07 through 14-09.3-10, the court may enter a temporary order for child support consistent with the laws of this state other than this chapter if the court has jurisdiction under chapter 14-12.2.

14-09.3-21. (311) Modifying or terminating grant of custodial responsibility to nonparent.

1. Except for an order under section 14-09.3-15, except as otherwise provided in subsection 2, and consistent with the federal Servicemembers Civil Relief Act, [50 U.S.C. appendix sections 521 and 522], on motion of a deploying or other parent or any nonparent to whom caretaking authority, decisionmaking authority, or limited contact has been granted, the court may modify or terminate the grant if the modification or termination is consistent with sections 14-09.3-11 through 14-09.3-21 and it is in the best interests of the child. A modification is temporary and terminates pursuant to sections 14-09.3-22 through 14-09.3-25 after the deploying parent returns from deployment, unless the grant has been terminated before that time by court order.
2. On motion of a deploying parent, the court shall terminate a grant of limited contact.

14-09.3-22. (401) Procedure for terminating temporary grant of custodial responsibility established by agreement.

1. At any time after return from deployment, a temporary agreement granting custodial responsibility under sections 14-09.3-07 through 14-09.3-10 may be terminated by an agreement to terminate signed by the deploying parent and the other parent.
2. A temporary agreement under sections 14-09.3-07 through 14-09.3-10 granting custodial responsibility terminates:
   a. If an agreement to terminate under subsection 1 specifies a date for termination, on that date; or
   b. If the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by the deploying parent and the other parent.
3. In the absence of an agreement under subsection 1 to terminate, a temporary agreement granting custodial responsibility terminates under sections 14-09.3-07 through 14-09.3-10 sixty days after the deploying parent gives notice to the other parent that the deploying parent returned from deployment.
4. If a temporary agreement granting custodial responsibility was filed with a court pursuant to section 14-09.3-10, an agreement to terminate the temporary agreement also must be filed with that court within a reasonable time after the signing of the agreement. The case number and heading of the case concerning custodial responsibility or child support must be provided to the court with the agreement to terminate.

14-09.3-23. (402) Consent procedure for terminating temporary grant of custodial responsibility established by court order.

At any time after a deploying parent returns from deployment, the deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility issued under sections 14-09.3-11 through 14-09.3-21. After an agreement has been filed, the court shall issue an order terminating the temporary order effective on the date specified in the agreement. If a date is not specified, the order is effective immediately.

14-09.3-24. (403) Visitation before termination of temporary grant of custodial responsibility.

After a deploying parent returns from deployment until a temporary agreement or order for custodial responsibility established under sections 14-09.3-07 through 14-09.3-10 or sections 14-09.3-11 through 14-09.3-21 is terminated, the court shall issue a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interests of the child, even if the time of contact exceeds the time the deploying parent spent with the child before deployment.

14-09.3-25. (404) Termination by operation of law of temporary grant of custodial responsibility established by court order.

1. If an agreement between the parties to terminate a temporary order for custodial responsibility under sections 14-09.3-11 through 14-09.3-21 has not been filed, the order terminates sixty days after the deploying parent gives notice to the other parent and any nonparent granted custodial responsibility that the deploying parent has returned from deployment.
2. A proceeding seeking to prevent termination of a temporary order for custodial responsibility is governed by law of this state other than this chapter.

14-09.3-26. (502) Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].