

North Carolina Adopts the Uniform Deployed Parent Custody and Visitation Act

M.S. ARCHER
Legal Assistance Director
Marine Corps Installations East

On April 16, 2013, North Carolina Governor Pat McCrory signed the Uniform Deployed Custody and Visitation Act (NC House Bill 139). The Act (a) provides rules for parents to address deployed custody issues by agreement, (b) authorizes, in some cases, nonparents to exercise the custody rights of the deployed parent, and (c) establishes an expedited process for courts to address custody issues of a deploying parent. The Act, which passed without a single dissenting vote in both the NC House and Senate, builds on the work of the Uniform Laws Commission, which drafted and approved the measure in 2012. The ABA House of Delegates approved the measure in February of this year. Summary follows:

Custody determinations. The guiding light for a court in determining custody and visitation remains the best interest of the child. However, the new Act provides that a court may not consider past deployment or possible future deployment as the sole basis for determining the child's best interests.

Jurisdiction. The essence of the new rule concerning jurisdiction is that it is unaffected by deployment. As before, a North Carolina court can act on a custody issue only when it has authority to do so under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). However, the law now specifically provides three situations in which deployment does not change residency for UCCJEA purposes: (a) the court has issued a temporary custody order, (b) the court issued a permanent order prior to notice of deployment and the parties modified it temporarily through a deployed custody agreement, and (c) a court in another state issued a temporary custody agreement as a result of a pending or current deployment.

Notice of deployment and deployed custody plan. The service member parent is now required to provide notice to the other parent of a pending deployment within seven days after receiving notice of deployment. If circumstances of military service prevent such timely notice, then notice shall be made as soon as reasonably possible. The notice must be "in a record," unless the parents live in the same residence and there is actual notice of deployment. If there is a court order prohibiting the disclosure of contact information to the other parent, as in a domestic abuse situation, the deploying parent shall provide such notice to the court, which shall forward it to the other parent. Additionally, each parent shall, as soon as reasonably possible, provide the other parent with a plan for addressing their respective custodial responsibilities during the deployment.

Deployed Custody Agreements. Under the Act, parents may enter into temporary agreements addressing custody and visitation during deployment. Such deployed custody agreements may allocate caretaking authority among the parents, provide caretaking authority to a nonparent, and describe electronic and other contact the deployed parent shall have with the child. The agreement must be in a writing signed by both parents and by any nonparent granted custodial responsibility. The agreement shall be filed with any court that has entered a custody agreement and shall bear the appropriate case number thereon. The agreement may be modified by consent of the parties, and it ends on its designated expiration day (if any), upon return from deployment, or by court order, whichever occurs first.

Caretaking Authority of a Non-Parent. As noted above, the parents can enter into a temporary agreement authorizing custodial rights to a nonparent. In addition, on motion of a deploying parent, a court may grant caretaking authority to an adult family member of the child or an adult with whom the child has a "close and substantial" relationship. However, unless the other party agrees, a court grant of caretaking authority is limited to (a) the amount of time provided to the deployed parent provided in the prior court

order, or (b) the amount of time that the deployed parent habitually cared for the child before the deployment.

Deployed Custody Proceedings. If a custody motion is filed prior to deployment, it shall be given an expedited hearing. Furthermore, a party or witness who is not reasonably available may provide testimony and evidence through electronic means. The court will enforce the parties' written agreement unless it is determined to be contrary to the best interests of the child.

The Act becomes effective October 1st, 2013.

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