



CO-COUNSEL BULLETIN



OVERVIEW OF THE UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

In April 2013 the North Carolina General Assembly passed the Uniform Deployed Parents Custody and Visitation Act, replacing Gen. Stat. 50-13.7A. The Act is effective October 1, 2013. Here is an overview:

<u>Act</u>	<u>Summary</u>
Part 1	General Provisions
G.S. 50A-350	<u>Short Title</u>
G.S. 50A-351	<u>Definitions</u> (e.g., “adult,” “caretaking authority,” “close and substantial relationship,” “deployment,” “service member” and “uniformed services”)
G.S. 50A-352	<u>Remedies for Noncompliance</u> : This includes attorney fees and costs
G.S. 50A-353	<u>Jurisdiction</u> : The residence of the deploying parent is not changed by reason of deployment for the purposes of UCCJEA
G.S. 50A-354	<u>Notice Required of Deploying Parent</u> : The deploying parent must give at least 7 days’ notice of deployment (in gen’l); exchange of proposed parenting plans is required; reasonableness of a parent’s efforts to comply may be considered in custody determination
G.S. 50A-355	<u>Duty to Notify of Change of Address</u> : Non-deploying parent must give address-change info to the deploying parent and the court; exception if an existing order prohibits this disclosure (e.g., domestic violence case)
G.S. 50-13.2(f)	<u>Gen’l Considerations in Custody Proceeding of a Parent’s Mil. Service</u> : Past and possible future deployments may not be considered in determining the best interest of the child, but court may consider “any significant impact” on child of such deployments
Part 2	Agreement Addressing Custodial Responsibility During Deployment
G.S. 50A-360	<u>Form of Agreement</u> : Temporary agreement must be in writing, signed by parents and by any nonparent to whom custody duties are given. It may... <ul style="list-style-type: none"> - Identify (to extent feasible) the destination, duration and conditions of the deployment - Specify the allocation of caretaking authority among deploying parent, other parent and any nonparent - Specify any decision-making authority that accompanies caretaking

	<ul style="list-style-type: none"> - Specify any grant of limited contact to a nonparent - Provide for dispute resolution when agreement shares custodial responsibility between parent and nonparent, or between two nonparents - Specify the frequency, duration and means of contact between deployed parent and child, role of other parent in facilitating contact, and allocation of cost - Specify contact between deploying parent and child during any period of leave - Acknowledge that a party's child-support obligation may only be changed during deployment by the appropriate court - Provide for termination upon return from deployment under Part 4 procedures below - If agreement must be filed under G.S. 50A-364 Section 205, state which parent shall do so
G.S. 50A-361	<u>Nature of Authority Created by Agreement</u> : Agreement is temporary and ends upon return from deployment; it does not create independent rights or authority in persons to whom responsibility is given; nonparent given authority or contact rights has standing to enforce agreement
G.S. 50A-362	<u>Modification of Agreement</u> : Agreement may be modified by mutual consent of both parents and any nonparent who will exercise custodial responsibility under the agreement
G.S. 50A-363	<u>Power of Attorney</u> : Deploying parent may delegate all or part of custodial responsibility to a nonparent through power of atty. for the period of deployment under certain circumstances
G.S. 50A-364	<u>Filing Agreement or Power of Atty. with Court</u> : Requires filing of agreement and/or power of atty. with court or agency within reasonable period of time
Part 3	Judicial Procedure for Granting Custodial Responsibility During Deployment
G.S. 50A-370	<u>Proceeding for Temporary Custody Order</u> : Court may issue temp. custody order unless barred by Servicemembers Civil Relief Act, 50 U.S.C. Appx. 521-522; no permanent custody order except with consent of deploying parent
G.S. 50A-371	<u>Expedited Hearing</u> : Court shall conduct expedited hearing upon motion for same before deployment
G.S. 50A-372	<u>Testimony by Electronic Means</u> : A party or witness who is not reasonably available may testify and present evidence by electronic means unless good cause for personal appearance.
G.S. 50A-373	<u>Effect of Prior Judicial Decree or Agreement</u> : Prior order for custodial responsibility in case of deployment is binding unless circumstances justify modification; court shall enforce agreement of parties for custodial responsibility unless contrary to best interest of child.
G.S. 50A-374	<u>Grant of Caretaking or Decision-Making Authority to Nonparent</u> : Upon motion of deploying parent, court may grant caretaking authority to nonparent who is adult

	<p>family member, or who has close and substantial relationship with child, if in child's best interest. Absent agreement by other parent, caretaking time is limited to...</p> <ul style="list-style-type: none"> - Ordinary visitation time of deploying parent in existing order (plus unusual travel time, if necessary) - If no existing order, the time that deploying parent cared for child prior to notice of deployment (plus unusual travel time, if necessary). <p>Court may grant part of decision-making authority for a child to said nonparent, and order shall specify areas of decision-making, including health, education and religion. Any nonparent to whom caretaking authority or decision-making authority is granted shall be made a party to the action until the grant of caretaking authority or decision-making authority is terminated.</p>
G.S. 50A-375	<p><u>Grant of Limited Contact</u>: Upon motion of deploying parent, court shall grant limited contact to nonparent who is adult family member, or who has close and substantial relationship with child, unless court finds this not in child's best interest. Any nonparent to whom limited contact is granted shall be made a party to the action until the grant of caretaking authority or decision-making authority is terminated.</p>
G.S. 50A-376	<p><u>Nature of Authority Granted by Order</u>: Grant of authority is temporary, ends upon return from deployment; it does not create independent rights or authority in persons to whom responsibility is given; nonparent granted authority or contact rights has standing to enforce the grant. Any nonparent made a party under above sections shall have no continuing right to party status after the said grant is terminated.</p>
G.S. 50A-377	<p><u>Content of Temporary Custody Order</u>: Order granting custodial responsibility must...</p> <ul style="list-style-type: none"> - Designate order as temporary - Identify (to extent feasible) the destination, duration and conditions of the deployment <p>If applicable, temp. order for custodial responsibility must...</p> <ul style="list-style-type: none"> - Specify the allocation of caretaking authority among deploying parent, other parent and any nonparent - Provide for dispute resolution when agreement shares custodial responsibility between parent and nonparent, or between two nonparents - Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications - Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or is otherwise available, unless contrary to the best interest of the child - Provide for reasonable contact between deploying parent and child following return from deployment until the temporary order is

	<p>terminated, which may include more time than the deploying parent spent with the child before entry of the temporary order</p> <ul style="list-style-type: none"> - Specify any decision-making authority that accompanies caretaking - Specify any grant of limited contact to a nonparent - Provide for termination upon return from deployment under Part 4 procedures below
G.S. 50A-378	<u>Order for Child Support</u> : If caretaking order issued or agreement executed, court may order temporary child support if UIFSA jurisdiction exists
G.S. 50A-379	<u>Modifying or Terminating Assignment or Grant of Custodial Responsibility to Nonparent</u> : Court may modify or terminate an order providing for caretaking, decision-making or limited contact. Any modification is temporary and ends upon return from deployment, unless earlier terminated. On motion of deploying parent, court shall end order of limited contact.
Part 4	Return from Deployment
G.S. 50A-385	<u>Procedure for Terminating Temporary Grant of Custodial Responsibility Established by Agreement</u> : At any time after return from deployment, temp. custodial responsibility agreement may be terminated upon signatures of both parents. Otherwise it ends upon date which is set out in it for termination. If no date in it or written agreement to terminate, then it ends 60 days from date the deploying parent gives notice to other parent of return from deployment, or date of order terminating temporary grant of custodial responsibility, or at death of deploying parent. If temp. agreement was filed with court/agency under G.S. 50A-364, then agreement to terminate must also be filed within reas. period of time after signing. Case number and heading must be provided.
G.S. 50A-386	<u>Consent Procedure for Terminating Temporary Grant of Custodial Responsibility Established by Court Order</u> : At any time after return from deployment, both parents may file with court an agreement to terminate custodial responsibility order. After agreement is filed, court shall issue order ending the temp. order on date set out in agreement. If no date set out, then order is issued immediately.
G.S. 50A-387	<u>Visitation before Termination of Temporary Grant of Custodial Responsibility</u> : After return from deployment and until order or agreement is terminated, court shall enter temporary order granting deploying parent reas. contact with child (unless contrary to best interest of child), even though time may exceed that spent with child before deployment.
G.S. 50A-388	<u>Termination by Operation of Law of Temporary Grant of Custodial Responsibility Established by Court Order</u> : If no agreement to end temporary order for custodial responsibility, then it ends 60 days from date the deploying parent gives notice of return from deployment to other parent and any nonparent given custodial responsibility, or at death of deploying parent. Any proceeding to terminate or prevent termination of temp. custodial responsibility order is governed by other provisions of state law.
Part 5	Miscellaneous Provisions

G.S. 50A-395	<u>Uniformity of Application and Construction</u> : In applying and interpreting this statute, courts should consider need for uniformity among states that enact it.
G.S. 50A-396	<u>Relation to Electronic Signatures in Global and National Commerce Act</u> : This Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 <i>et seq.</i> , 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).

(rev. 9/23/2013)

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The CO-COUNSEL BULLETIN series of information papers for legal assistance attorneys and civilian lawyers in North Carolina is a product of the NC State Bar's Standing Committee on Legal Assistance for Military Personnel (LAMP). For comments or corrections, contact LAMP Committee member Mark E. Sullivan, 919-832-8507, or at Mark.Sullivan@ncfamilylaw.com. This Bulletin was written by Mr. Sullivan, who served for two years on the committee of the Uniform Law Commission which drafted the UDPCVA.