

CHAPTER II

Uniform Deployed Custody and Jurisdiction Act

G. Brentley Tanner
Cheshire Parker Schneider & Bryan PLLC
Raleigh, NC

NORTH CAROLINA

BAR ASSOCIATION

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Custody & The UDPCVA



CHESHIRE PARKER SCHNEIDER & BRYAN,
PLLC
RALEIGH, NORTH CAROLINA

Problems, Problems, Problems



- **What happens to the child when a parent deploys?**
 - Role of step-parents
 - Visitation and decision-making during deployment
 - Changes in jurisdiction
 - Refusal to return child upon return

Diffin v. Towne, 787 N.Y.S. 2d 677 (Fam. Ct. 2004), *aff'd*, 47 A.D. 3d 988 (App. Div. 2008)

- Mom awarded custody, FCP gives custody to new Husband, Mom deploys, dad files for custody
- Mom files for a stay under SCRA arguing that the SCRA prevents the Judge from proceeding with temporary or permanent relief – thereby automatically vesting custody with new husband
- Court sides with dad granting him temporary custody until mom's return, citing grand court of equity: sword v. shield

Crouch v. Crouch, 201 S.W.3d 463 (Ky. 2006).

- Mom granted custody in 1996
- In 2003 Mom deploys and transfers custody by consent to Dad
- Mom returns, Dad refuses to return child claiming the 2003 custody transfer was intended to be permanent
- Appellate courts side with Mom, order was intended to be temporary 2 years and \$50,000 later...

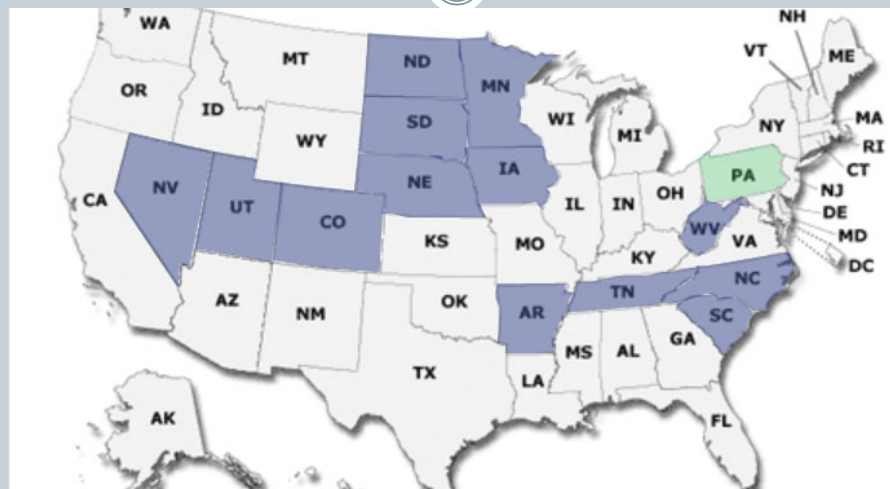
In re Marriage of Brandt, 268 P.3d 406
(Colo. 2012)

- Mom has custody, lives in MD
- Mom is deployed, sends child to live with Dad in CO pursuant to FCP
- Dad files for custody in CO claiming neither parent nor child currently reside in MD
- MD and CO Judges confer but cannot agree on jurisdiction
- Appellate court in CO ultimately decides Mom's temporary absence due to military orders doesn't divest MD of jurisdiction

UDPCVA

- Goal: Uniform, expeditious, fair disposition of military custody cases (ie. Avoid *Diffin*, *Crouch*, *Brandt*, etc.)
- 5 Articles
 - Article 1: Definitions, Enforcement, Notice Requirements, Attorney's Fees
 - Article 2: Addressing Custody in the Absence of a SM by Agreement
 - Article 3: Addressing Custody in the Absence of a SM by Court Order
 - Article 4: Return from Deployment
 - Article 5: Boilerplate

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Article 1: Definitions

- Deployment: More than 90 days but less than 18 months & unaccompanied
- 3 Types of “Custody”
 - × Caretaking Authority
 - × Decisionmaking Authority
 - × Limited Contact
- Family Member: sibling, aunt, uncle, cousin, stepparent or grandparent

Article 1: Noncompliance

- Remedies for Noncompliance: If a court finds that a party 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 other appropriate relief

Article 1: Jurisdiction

- Jurisdiction must be consistent with the UCCJEA
- "Residence of the deploying parent is not changed by reason of the deployment"

Article 1: Notification

- A deploying parent SHALL notify in a record the other parent of a pending deployment or redeployment no later than 7 DAYS after receiving notice unless reasonably prevented by the circumstances of service and in that case, as soon as reasonably possible
- Each parent SHALL provide the other parent with a plan for fulfilling that parent's share of custodial responsibility during deployment
 - "In a record"
 - "As soon as reasonably possible"

Article 1: Change of Address

- A person to whom custodial responsibility has been granted during deployment shall notify:
 - the deploying parent,
 - any other individual with custodial responsibility, and
 - the courtof any change in mailing or residential address until the grant of responsibility is terminated

Article 2: Temporary Agreements

- Parents may enter into a temporary agreement granting custodial responsibility during deployment
- Agreement must be:
 - In writing
 - Signed by both parents and any nonparent to whom custodial responsibility is granted
- Agreement is temporary and terminates after the deploying parent returns
- Can be enforced by any party until termination but does not create an independent, continuing right to custodial responsibility
- Can be modified:
 - Before Deployment: In writing & signed
 - During Deployment: Agreed to in a record

Article 2: Temporary Agreements

- Identify the destination, duration, and conditions of the deployment that is the basis for the agreement;
- Specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent;
- Specify any decisionmaking authority that accompanies a grant of caretaking authority;
- Specify any grant of limited contact to a nonparent;

Article 2: Temporary Agreements

- 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;
- 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;
- Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;
- Provide that the agreement will terminate according to the procedures under Article 4 after the deploying parent returns from deployment;

Article 3: Court Orders

- After notice of deployment, either parent may file a motion to address custodial responsibility during deployment
- Court may issue temporary orders granting custodial responsibility during deployment
- No permanent order without consent
- Court may order temporary child support consistent with UIFSA

Prior order or agreement?



BINDING

Motion filed PRIOR to
deployment



**EXPEDITED
HEARING**

Party or Witness not reasonably available to appear personally



ELECTRONIC TESTIMONY & EVIDENCE

DELEGATED VISITATION RIGHTS

- On motion of a deploying parent, 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 relationshipSo long as it's in the best interests of the child
- Unless agreed to by the other parent, the grant is limited to no greater than:
 - The amount of time granted to the deploying parent under existing Order, OR
 - Amount of time the deploying parent habitually cared for the child before deployment

DELEGATED RIGHTS CONTINUED

- 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 relationshipSo long as it's in the best interests of the child
- Court shall specify the powers granted



DELEGATED RIGHTS CONTINUED

- On motion of a deploying parent, unless a court finds 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 or an individual with whom the child has a close and substantial relationship.



Article 3: Court Orders

- Designate the order as temporary;
- Identify to the extent feasible, the destination, duration, and conditions of the deployment.
- Specify the allocation of caretaking authority, decisionmaking authority, or limited contact among the deploying parent, the other parent, and any nonparent;
- 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;
- 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;
- 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;
- 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
- Provide that the order will terminate pursuant to Article 4 after the deploying parent returns from deployment.

Return from Deployment

- **After return from deployment, the custodial grant terminates by :**
 - Agreement/consent order,
 - on the date specified in the Agreement, or
 - no later than 60 days following notice of return
- **Prior to termination, the court shall issue a temporary order granting the deploying parent reasonable contact**

Cheshire Parker Schneider & Bryan, PLLC



ASHLEY L. OLDHAM
GENE BRENTLEY TANNER
KAITLIN S. KOBER

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