

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 130

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

AN ACT

RELATING TO DOMESTIC RELATIONS; ENACTING THE DEPLOYED PARENTS
CUSTODY AND VISITATION ACT; ESTABLISHING PROCEDURES FOR
MODIFYING EXISTING CUSTODY, TIME-SHARING OR VISITATION ORDERS
FOR CHILDREN OF SERVICE MEMBERS; PROHIBITING ENTRY OF FINAL
ORDERS MODIFYING EXISTING CHILD CUSTODY, TIME-SHARING OR
VISITATION ORDERS WHILE A SERVICE MEMBER IS UNAVAILABLE
PURSUANT TO MILITARY ORDERS; PROHIBITING THE MODIFICATION OF
EXISTING CHILD CUSTODY, TIME-SHARING OR VISITATION ORDERS
SOLELY BECAUSE A SERVICE MEMBER IS ABSENT OR MIGHT BE ABSENT
PURSUANT TO MILITARY ORDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Deployed Parents Custody and Visitation Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the

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1 Deployed Parents Custody and Visitation Act:

2 A. "adult" means an individual who has attained
3 eighteen years of age or is an emancipated minor;

4 B. "caretaking authority" means the right to live
5 with and care for a child on a day-to-day basis. "Caretaking
6 authority" includes physical custody, parenting time, right to
7 access and visitation;

8 C. "child" means:

9 (1) an unemancipated individual who has not
10 attained eighteen years of age; or

11 (2) an adult son or daughter by birth or
12 adoption, or under law of this state other than the Deployed
13 Parents Custody and Visitation Act, who is the subject of a
14 court order concerning custodial responsibility;

15 D. "court" means a tribunal, including an
16 administrative agency, authorized under law of this state other
17 than the Deployed Parents Custody and Visitation Act, to make,
18 enforce or modify a decision regarding custodial
19 responsibility;

20 E. "custodial responsibility" includes all powers
21 and duties relating to caretaking authority and decision-making
22 authority for a child. "Custodial responsibility" includes
23 physical custody, legal custody, parenting time, right to
24 access, visitation and authority to grant limited contact with
25 a child;

.196593.4

1 F. "decision-making authority" means the power to
2 make important decisions regarding a child, including decisions
3 regarding the child's education, religious training, health
4 care, extracurricular activities and travel. "Decision-making
5 authority" does not include the power to make decisions that
6 necessarily accompany a grant of caretaking authority;

7 G. "deploying parent" means a service member who is
8 deployed or has been notified of impending deployment and is:

9 (1) a parent of a child under law of this
10 state other than the Deployed Parents Custody and Visitation
11 Act; or

12 (2) an individual who has custodial
13 responsibility for a child under law of this state other than
14 the Deployed Parents Custody and Visitation Act;

15 H. "deployment" means the movement or mobilization
16 of a service member for more than ninety days but less than
17 eighteen months pursuant to uniformed service orders that:

18 (1) are designated as unaccompanied;

19 (2) do not authorize dependent travel; or

20 (3) otherwise do not permit the movement of
21 family members to the location to which the service member is
22 deployed;

23 I. "family member" means a sibling, aunt, uncle,
24 cousin, stepparent or grandparent of a child or an individual
25 recognized to be in a familial relationship with a child under

.196593.4

1 law of this state other than the Deployed Parents Custody and
2 Visitation Act;

3 J. "limited contact" means the authority of a
4 nonparent to visit a child for a limited time. "Limited
5 contact" includes authority to take the child to a place other
6 than the residence of the child;

7 K. "nonparent" means an individual other than a
8 deploying parent or other parent;

9 L. "other parent" means an individual who, in
10 common with a deploying parent, is:

11 (1) a parent of a child under law of this
12 state other than the Deployed Parents Custody and Visitation
13 Act; or

14 (2) an individual who has custodial
15 responsibility for a child under law of this state other than
16 the Deployed Parents Custody and Visitation Act;

17 M. "record" means information that is inscribed on
18 a tangible medium or that is stored in an electronic or other
19 medium and is retrievable in perceivable form;

20 N. "return from deployment" means the conclusion of
21 a service member's deployment as specified in uniformed service
22 orders;

23 O. "service member" means a member of a uniformed
24 service;

25 P. "sign" means with present intent to authenticate

1 or adopt a record to:

- 2 (1) execute or adopt a tangible symbol; or
3 (2) attach to or logically associate with the
4 record an electronic symbol, sound or process;

5 Q. "state" means a state of the United States, the
6 District of Columbia, Puerto Rico, the United States Virgin
7 Islands or any territory or insular possession subject to the
8 jurisdiction of the United States; and

9 R. "uniformed service" means:

10 (1) active and reserve components of the army,
11 navy, air force, marine corps or coast guard of the United
12 States;

13 (2) the United States merchant marine;

14 (3) the commissioned corps of the United
15 States public health service;

16 (4) the commissioned corps of the national
17 oceanic and atmospheric administration of the United States; or

18 (5) the national guard of a state.

19 SECTION 3. [NEW MATERIAL] RESIDENCE UNCHANGED BY
20 DEPLOYMENT.--

21 A. If a court has issued a temporary order
22 regarding custodial responsibility pursuant to the Deployed
23 Parents Custody and Visitation Act, the residence of the
24 deploying parent is not considered to be changed by reason of
25 the deployment for the purposes of the Uniform Child-Custody

.196593.4

1 Jurisdiction and Enforcement Act during the deployment.

2 B. If a court has issued a permanent order
3 regarding custodial responsibility before notice of deployment
4 and the parents modify that order temporarily by agreement
5 pursuant to the Deployed Parents Custody and Visitation Act,
6 the residence of the deploying parent is not considered to be
7 changed by reason of the deployment for the purposes of the
8 Uniform Child-Custody Jurisdiction and Enforcement Act.

9 C. If a court in another state has issued a
10 temporary order regarding custodial responsibility as a result
11 of impending or current deployment, the residence of the
12 deploying parent is not considered to be changed by reason of
13 the deployment for the purposes of the Uniform Child-Custody
14 Jurisdiction and Enforcement Act.

15 SECTION 4. [NEW MATERIAL] NOTIFICATION REQUIRED OF
16 DEPLOYING PARENT.--

17 A. Except as otherwise provided in Subsection D of
18 this section and subject to Subsection C of this section, a
19 deploying parent shall notify in a record the other parent of a
20 pending deployment not later than seven days after receiving
21 notice of deployment unless reasonably prevented from doing so
22 by the circumstances of service.

23 B. Except as otherwise provided in Subsection D of
24 this section and subject to Subsection C of this section, each
25 parent shall provide in a record the other parent with a plan

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1 for fulfilling that parent's share of custodial responsibility
2 during deployment. Each parent shall provide the plan as soon
3 as reasonably possible after notification of deployment.

4 C. If a court order currently in effect prohibits
5 disclosure of the address or contact information of the other
6 parent, notification of deployment pursuant to Subsection A of
7 this section or notification of a plan for custodial
8 responsibility during deployment pursuant to Subsection B of
9 this section may be made only to the issuing court. If the
10 address of the other parent is available to the issuing court,
11 the court shall forward the notification to the other parent.
12 The court shall keep confidential the address or contact
13 information of the other parent.

14 D. Notification in a record under Subsection A or B
15 of this section is not required if the parents are living in
16 the same residence and both parents have actual notice of the
17 deployment or plan.

18 SECTION 5. [NEW MATERIAL] DUTY TO NOTIFY OF CHANGE OF
19 ADDRESS.--

20 A. Except as otherwise provided in Subsection B of
21 this section, an individual to whom custodial responsibility
22 has been granted during deployment pursuant to the Deployed
23 Parents Custody and Visitation Act shall notify the deploying
24 parent and any other individual with custodial responsibility
25 of a child of any change of the individual's mailing address or

.196593.4

1 residence until the custodial responsibility is terminated.

2 B. If a court order currently in effect prohibits
3 disclosure of the address or contact information of an
4 individual to whom custodial responsibility has been granted, a
5 notification pursuant to Subsection A of this section may be
6 made only to the court that issued the order. The court shall
7 keep confidential the mailing address or residence of the
8 individual to whom custodial responsibility has been granted.

9 SECTION 6. [NEW MATERIAL] GENERAL CONSIDERATION IN
10 CUSTODY PROCEEDING OF PARENT'S MILITARY SERVICE.--In a
11 proceeding for custodial responsibility of a child of a service
12 member, a court shall not consider a parent's past deployment
13 or possible future deployment in itself in determining the best
14 interest of the child.

15 SECTION 7. [NEW MATERIAL] AGREEMENT ADDRESSING CUSTODIAL
16 RESPONSIBILITY DURING DEPLOYMENT--FORM OF AGREEMENT.--

17 A. The parents of a child may enter into a
18 temporary agreement granting custodial responsibility during
19 deployment under the Deployed Parents Custody and Visitation
20 Act.

21 B. A temporary agreement pursuant to Subsection A
22 of this section shall be:

23 (1) in writing; and

24 (2) signed by both parents and any nonparent
25 to whom custodial responsibility is granted.

.196593.4

1 SECTION 8. [NEW MATERIAL] NATURE OF AUTHORITY CREATED BY
2 AGREEMENT.--

3 A. An agreement under the Deployed Parents Custody
4 and Visitation Act is temporary and terminates pursuant to that
5 act after the deploying parent returns from deployment, unless
6 the agreement has been terminated before that time by court
7 order. The agreement does not create an independent,
8 continuing right to caretaking authority, decision-making
9 authority or limited contact in an individual to whom custodial
10 responsibility is given.

11 B. A nonparent who has caretaking authority,
12 decision-making authority or limited contact by an agreement
13 pursuant to the Deployed Parents Custody and Visitation Act has
14 standing to enforce the agreement until it has been terminated
15 by court order.

16 SECTION 9. [NEW MATERIAL] EXPEDITED HEARING.--If a motion
17 to grant custodial responsibility is filed pursuant to the
18 Deployed Parents Custody and Visitation Act before a deploying
19 parent deploys, the court shall conduct an expedited hearing.

20 SECTION 10. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2014.