

HOUSE RESEARCH

Bill Summary

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Overview

This bill creates a chapter called the Uniform Deployed Parents Custody and Visitation Act. The bill provides procedures and new laws that govern how parties can enter agreements for parenting and custody, including visitation with a nonparent and electronic, email, and telephone communication with a deployed parent, prior to and during the deployment of a parent who is in the armed services.

This uniform law has been enacted in Nevada, Colorado, North Dakota, South Dakota, Tennessee, and North Carolina. In addition to Minnesota, it has also been introduced in 2015 in the District of Columbia, Nebraska, and South Carolina.

This bill does not change or alter the rights granted under the Service Members' Civil Relief Act which allows service members to stay civil proceedings during active duty for various lengths of time.

Section

Article 1

Overview

This article provides the title, definitions, jurisdiction, and notice requirements for the Uniform Deployed Parents Custody and Visitation Act.

- 1 **Best interest of the child.** Adds a provision to existing law on the determination of custody to prohibit the court from making a custody or parenting time decision solely based on the parent's past or future deployment.
- 2 **Short title.** Allows Chapter 518E to be cited as the Uniform Deployed Parents Custody and Visitation Act.
- 3 **Definitions.** Provides definitions for terms used in Chapter 518E. Some important terms include:
 - “Caretaking authority” means the right to live with and care for a child including physical custody and parenting time.
 - “Custodial responsibility” means all caretaking and decision-making authority for a child including physical custody, legal custody, and parenting time.
 - “Decision making authority” means the power to make important decision for a child including education, religion, medical, travel, and extracurricular activities, but does not include decisions related to caretaking authority.
 - “Deployed parent” means a parent of a child or a person who has custody or visitation with a child who is deployed or who has been notified of deployment.
 - “Deployment” means military service that requires movement for more than 90 days but less than 18 months and does not allow the family or dependents to accompany the service member.
 - “Limited contact” means authority of a nonparent to visit a child for limited time including taking the child out of the child's primary residence.
 - “Nonparent” means an individual other than a deployed parent.
 - “Other parent” means the parent of a child who is not deployed who has a child in common with a deployed parent.
 - “Uniformed service” means active and reserve components of the Army, Navy, Air Force, Marine Corps, Coast Guard, Merchant Marine, state National Guard, or a commissioned corps of the United States Public Health Service or National Oceanic and Atmospheric Administration.
 - “Virtual parenting” has the meaning given under section 518.1705, subdivision 2, paragraph (d), (see section 2 of A15-0013) which means reasonable and uncensored time during which the parent and child can communicated which includes telephone calls, emails, instant messaging, video conferencing or other available technologies.

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- 4 Remedies for noncompliance.** Provides the court with the ability to assess reasonable attorney fees and costs and order other appropriate relief when a party acts in bad faith or intentionally fails to comply with the act or fails to follow a court order issued under the act.
- 5 Jurisdiction.** Requires a court in Minnesota to have jurisdiction over the case under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) which determines the jurisdiction for custody between jurisdictions including states and tribes. This section indicates that a parent's deployment does not change their residence for the purposes of determining custody for a new or existing case in Minnesota or another state. Nothing in this section changes the ability of the court to exercise temporary emergency jurisdiction under the UCCJEA.
- 6 Notification required of deploying parent.** Requires a deploying parent to provide written notice or email to the other parent of the deployment within seven days of receiving notice and then provide a written notice or email of how the parent will fulfill their parenting time while on deployment. This section provides that when the deploying parent does not have access to the other parents address, they can send the notice to the court but the notice is not needed when the parents are residing together.
- 7 Duty to notify of change of address.** Requires a parent who has custody or parenting time during the deployment to notify the court and deployed parent, and anyone else with custody, parenting time, or visitation of a change of address, unless a court order has prohibited disclosure and then the new address only needs to be made to the court.

Article 2

Overview

This article provides the procedure for parents and nonparents to reach an agreement on custody and visitation while a parent is deployed and how that agreement terminates and is modified prior, during, and after deployment.

- 1 Form of Agreement.** Provides a process for a written agreement for custody and visitation during a parent's deployment and specifies that the parents or other caretaker cannot modify child support through a written agreement and that failing to include some provisions does not invalidate an agreement made pursuant to this section.
- 2 Nature of authority created by agreement.** Provides that a parent or nonparent who has custody or parenting time under the agreement that is in effect during deployment does not have a continuing right to custody or visitation after the agreement has been modified by a court, modified by subsequent agreement, or after the agreement has terminated. This section does give standing to a nonparent who has rights of custody or visitation under the agreement during the parent's deployment, as a means to enforce those rights until those rights have been modified in a subsequent agreement or by a court order, or when the agreement has been terminated.

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- 3** **Modification of an agreement.** Provides that the parents or nonparents who have custody or parenting time may modify an agreement that has been made in writing prior to deployment or through written or electronic means after the deployment and that all parties with custody or parenting time must agree.
- 4** **Power of attorney.** Allows a deploying parent to grant power of attorney and with that custody and parenting time to a nonparent during the deployment when there is no other parent who has custody or parenting rights pursuant to Minnesota law.
- 5** **Filing agreement or power of attorney with court.** Requires an agreement reached under this section to be filed with a court if there is a court case or order already related to custody, parenting time, or child support of a child who is the subject of the agreement or power of attorney.

Article 3

Overview

This article provides the jurisdictional procedure for granting court ordered custody and parenting time during a parent's deployment.

- 1** **Definitions.** Provides a definition for "close and substantial relationship" which means a relationship where a significant bond exists between a child and a nonparent.
- 2** **Proceeding for custody order.** Allows a parent to motion the court for custody and parenting time, and the court to issue an order for custody and parenting time prior to and up until the end of the deployment unless it is barred by the Service Members Civil Relief Act, but does not allow the court to enter a permanent order on custody and parenting time unless the deployed parent agrees to it. The requirements for jurisdiction under the UCCJEA are still applicable.
- 3** **Expedited evidentiary hearing.** Requires the court to grant an expedited evidentiary hearing within 30 days when a party files for custody or parenting time and a parent is deploying. The court must base a decision on custody and parenting time on existing Minnesota law for custody and parenting time determinations and the best interest of the child factors under section 518.17. This section also shortens the length of time the court has to issue an order from 90 days to 30 days.
- 4** **Testimony by electronic means.** Allows the court to accept testimony via electronic means unless the court finds good cause to require a personal appearance.
- 5** **Effect of prior judicial order or agreement.** When the parents have already specified a plan for deployment in a previous court order or in an agreement reached by the parents the court shall uphold the agreement or prior order unless the court finds that a modification is appropriate under the modification laws of the state or that the agreement of the parties on custody and parenting time during the deployment is not in the best interest of the child.

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- 6** **Grant of caretaking or decision-making authority to nonparent.** Allows the court to grant custody and parenting time to a nonparent who is either a family member or another adult who has a close and substantial relationship with the child. This section requires that the other parent either agree to the custody or parenting time or that the court limit the custody and parenting time of the nonparent to the amount of time already granted to a deployed parent under a permanent custody order or that the deployed parent habitually spent with the child. This section also allows for travel time to be added and to allow a grant of some of the rights of legal custody to a nonparent when it is in the child's best interest.
- 7** **Grant of limited contact.** Allows the court to grant visitation with a nonparent who is a family of the child or an individual with whom the child has a close and substantial relationship when the deploying parent requests it and the court finds it is not contrary to the child's best interest. This section would be administered according to Minnesota law on visitation for nonparents.
- 8** **Nature of authority created by custody order.** Provides that a court ordered grant of custody or parenting time, including visitation with a nonparent, terminates 60 days after the deployed parent returns and notifies the other parent or by court order or agreement. It does not create an ongoing right to custody or parenting time outside of what is available under other laws of the state.
- 9** **Content of custody order.** Requires the court to include in the order that the custody or parenting time awarded under this section is for a limited duration, identify and address any issues related to domestic violence, and appoint a parenting time expeditor. This section also provides other considerations the court must include when they apply including the custody and parenting time of the parents and nonparents and how communication will occur between the child and the deployed parent during deployment.
- 10** **Order for child support.** Provides that when the court has jurisdiction, it can issue a temporary child support order under the Minnesota child support statutes if a court order under this chapter or an agreement made pursuant to this chapter has been filed with the court.
- 11** **Modifying or terminating a grant of custodial responsibility to nonparent.** Allows the parties to modify an order made under this chapter.
- 12** **Motion for amended findings and order.** Allows for a motion to amend an order under the Minnesota Rules of Civil Procedure.

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Article 4

Overview

Provides the procedure for termination after the deployed parent returns from deployment.

- 1 **Procedure for terminating grant of custodial responsibility established by agreement.** Allows the parties to agree to terminate an agreement for custody and parenting time made under this chapter. This section also provides that an agreement to terminate can be put into the agreement so that the agreement will terminate on the date agreed or 60 days after the deploying parent gives notice that they have returned from deployment. This section requires the agreement to terminate to be filed with the court when the agreement for custody and parenting time under this chapter was previously filed with the court.
- 2 **Return from deployment; notification requirements.** Provides the requirement for notice from the deployed parent to the other parent when they deployment is ending and to the court.
- 3 **Consent procedure for terminating grant of custodial responsibility established by court order.** Allows the parents to agree to terminate an order for a grant of custody under this chapter at any point after the deployed parent returns by filing notice of termination with the court.
- 4 **Visitation before termination of grant of custodial responsibility.** Requires the court to grant a returning deployed parent reasonable contact with the child until an agreement or order is established, unless it is contrary to the best interests of the child.
- 5 **Termination by operation of law of grant of custodial responsibilities established by court order.** Provides that the order for custody and parenting time issued under this chapter terminates 60 days after notice of the end of the deployment provided by the deployed parent or comparable source and that proceedings to prevent the termination are governed by the custody and parenting time modification statutes.

Article 5

Overview

This article provides the application and effective date for this chapter.

- 6 **Uniformity of application and construction.** Provides that the court should construe this chapter with consideration to the promotion of uniformity of the law as it is applied in other states.
- 7 **Relation to Electronic Signatures in Global Communication and National Commerce Act.** Provides that this modifies and suppresses certain aspects of the federal law on electronic signatures.

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- 8 Savings clause.** Provides that application of this act does not apply to court orders for custody and parenting time during deployment that were entered before August 1, 2015.

Article 6

Overview

This article creates new laws related to virtual parenting time in the existing family law chapter 518. These provisions apply to all parents under Minnesota law and are not restricted to the application of the Uniform Deployed Parents Custody and Visitation Act.

- 1 Plan elements.** Provides that virtual parenting time must include virtual parenting time if the equipment necessary for virtual parenting time is reasonably available. This section provides a definition of “virtual parenting time” which means reasonable and uncensored time during which the parent and child can communicate which includes telephone calls, emails, instant messaging, video conferencing, or other available technologies. It also indicates that virtual parenting time cannot take the place of parenting time with a child and can only supplement parenting time with a child.
- 2 Creating parenting plan; restrictions on creation; alternatives.** Provides that when parents cannot agree on the availability of equipment to facilitate virtual parenting time, that the court shall take certain factors into consideration including the best interest of the child and the parents’ ability to afford the expense.
- 3 Modification of parenting time plans.** Allows parents to modify virtual parenting time plans when it is by agreement.
- 4 General.** Provides for the ability to order virtual parenting time in a temporary order pending a final permanent order on parenting time under chapter 518 and provides considerations for the court to use to make those determinations.
- 5 Modification of parenting plans or order for parenting time.** Allows parenting plans to be modified to include virtual parenting time using the same factors in the award of permanent or temporary parenting time, including the best interest of the child.
- Effective date.** Makes the laws in this chapter effective August 1, 2015.