

# Uniform Deployed Parents Custody and Visitation Act

The Act seeks to create uniformity and in efficiency in the just resolution of custody issues when an a member of the armed service is deployed by trying to balance of interests and protecting the rights of the service member, the other parent, and above all the best interest of the children involved. The bill is organized into five articles with the first containing definitions and provisions that apply generally to custody matters of service members. It also includes a notice provision requiring parents to communicate about custody and visitation issues as soon as possible after a service member learns of deployment. Article 2 sets out a simplified procedure for parents who agree to a custody arrangement during deployment to resolve these issues by an out-of-court agreement. In the absence of an agreement, Article 3 provides for an expedited resolution of a custody arrangement in court. Article 3 also declares that no permanent custody order can be entered before or during deployment without the service member’s consent. The fourth article governs termination of the temporary custody arrangement following the service member’s return from deployment, and the last article contains provisions on effective date, transition, and other language common to all uniform acts.

Submitted as:

North Dakota

[SB 2122](#)

Status: Became law in 2013.

## Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. This Act may be cited as the “Uniform Deployed Parents Act”

2

3 Section 2. [*Definitions.*]

4 As used in this Act:

5

6 1. "Adult" means an individual who has attained eighteen years of age or an emancipated minor.

7 2. "Caretaking authority" means the right to live with and care for a child on a day - to - day basis.

8 The term includes physical custody, parenting time, right to access, and visitation.

9 3. "Child" means:

10 a. An un-emancipated individual who has not attained eighteen years of age; or

11 b. An adult son or daughter by birth or adoption, or under law of this state other than this  
12 chapter, who is the subject of a court order concerning custodial responsibility.

13 4. "Court" means a tribunal authorized under law of this state other than this chapter to make,  
14 enforce, or modify a decision regarding custodial responsibility.

15 5. "Custodial responsibility" includes all powers and duties relating to caretaking authority and  
16 Decision making authority for a child. The term includes physical custody, legal custody, parenting  
17 time, right to access, visitation, and authority to grant limited contact with a child.

18 6. "Decision making authority" means the power to make important decisions regarding a child,  
19 including decisions regarding the child's education, religious training, health care, extracurricular  
20 activities, and travel. The term does not include the power to make decisions that necessarily  
21 accompany a grant of caretaking authority.

22 7. "Deploying parent" means a service member, who is deployed or has been notified of impending  
23 deployment and is:

24 a. A parent of a child under law of this state other than this chapter; or

- 1           b. An individual who has custodial responsibility for a child under law of this state other than  
2           this chapter.
- 3   8. "Deployment" means the movement or mobilization of a service member for more than ninety  
4   days but less than eighteen months pursuant to uniformed service orders that:
- 5           a. Are designated as unaccompanied;  
6           b. Do not authorize dependent travel; or  
7           c. Otherwise do not permit the movement of family members to the location to which the  
8           service member is deployed.
- 9   9. "Family member" means a sibling, aunt, uncle, cousin, stepparent, or grandparent of a child or an  
10   individual recognized to be in a familial relationship with a child under law of this state other than  
11   this chapter.
- 12   10. "Limited contact" means the authority of a nonparent to visit a child for a limited time. The term  
13   includes authority to take the child to a place other than the residence of the child.
- 14   11. "Nonparent" means an individual other than a deploying parent or other parent.
- 15   12. "Other parent" means an individual who, in common with a deploying parent, is:
- 16           a. A parent of a child under law of this state other than this chapter;  
17           b. An individual who has custodial responsibility for a child under law of this state other than  
18           this chapter.
- 19   13. "Record" means information that is inscribed on a tangible medium or that is stored in an  
20   electronic or other medium and is retrievable in perceivable form.
- 21   14. "Return from deployment" means the conclusion of a service member's deployment as specified  
22   in uniformed service orders.
- 23   15. "Service member" means a member of a uniformed service.
- 24   16. "Sign" means, with present intent to authenticate or adopt a record:
- 25           a. To execute or adopt a tangible symbol; or  
26           b. To attach to or logically associate with the record an electronic symbol, sound, or process.
- 27   17. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United  
28   States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United  
29   States.
- 30   18. "Uniformed service" means:
- 31           a. Active and reserve components of the army, navy, air force, marine corps, or coast guard  
32           of the United States;  
33           b. The United States merchant marine;  
34           c. The commissioned corps of the United States public health service;  
35           d. The commissioned corps of the national oceanic and atmospheric administration of the  
36           United States; or  
37           e. The national guard of a state.
- 38

39           Section 3. [*Best interests and welfare of child - Court consideration - Factors.*]

- 40           1. For the purpose of parental rights and responsibilities, the best interests and welfare of the  
41   child is determined by the court's consideration and evaluation of all factors affecting the best  
42   interests and welfare of the child. These factors include all of the following when applicable:
- 43           a. The love, affection, and other emotional ties existing between the parents and child  
44           and the ability of each parent to provide the child with nurture, love, affection, and guidance.  
45           b. The ability of each parent to assure that the child receives adequate food, clothing,  
46           shelter, medical care, and a safe environment.  
47           c. The child's developmental needs and the ability of each parent to meet those needs,  
48           both in the present and in the future.

1 d. The sufficiency and stability of each parent's home environment, the impact of  
2 extended family, the length of time the child has lived in each parent's home, and the  
3 desirability of maintaining continuity in the child's home and community.

4 e. The willingness and ability of each parent to facilitate and encourage a close and  
5 continuing relationship between the other parent and the child.

6 f. The moral fitness of the parents, as that fitness impacts the child.

7 g. The mental and physical health of the parents, as that health impacts the child.

8 h. The home, school, and community records of the child and the potential effect of  
9 any change.

10 i. If the court finds by clear and convincing evidence that a child is of sufficient  
11 maturity to make a sound judgment, the court may give substantial weight to the preference  
12 of the mature child. The court also shall give due consideration to other factors that may have  
13 affected the child's preference, including whether the child's preference was based on  
14 undesirable or improper influences.

15 j. Evidence of domestic violence. In determining parental rights and responsibilities,  
16 the court shall consider evidence of domestic violence. If the court finds credible evidence  
17 that domestic violence has occurred, and there exists one incident of domestic violence which  
18 resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a  
19 pattern of domestic violence within a reasonable time, this combination creates a rebuttable  
20 presumption that a parent who has perpetrated domestic violence may not be awarded  
21 residential responsibility for the child. This presumption may be overcome only by clear and  
22 convincing evidence that the best interests of the child require that parent have residential  
23 responsibility. The court shall cite specific findings of fact to show that the residential  
24 responsibility best protects the child and the parent or other family or household member  
25 who is the victim of domestic violence. If necessary to protect the welfare of the child,  
26 residential responsibility for a child may be awarded to a suitable third person, provided that  
27 the person would not allow access to a violent parent except as ordered by the court. If the  
28 court awards residential responsibility to a third person, the court shall give priority to the  
29 child's nearest suitable adult relative. The fact that the abused parent suffers from the effects  
30 of the abuse may not be grounds for denying that parent residential responsibility.

31 k. The interaction and interrelationship, or the potential for interaction and  
32 interrelationship, of the child with any person who resides in, is present, or frequents the  
33 household of a parent and who may significantly affect the child's best interests. The court  
34 shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily  
35 injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

36 l. The making of false allegations not made in good faith, by one parent against the  
37 other, of harm to a child as defined.

38 m. Any other factors considered by the court to be relevant to a particular parental  
39 rights and responsibilities dispute.

40 2. In a proceeding for parental rights and responsibilities of a child of a service member, a  
41 court may not consider a parent's past deployment or possible future deployment in itself in  
42 determining the best interests of the child but may consider any significant impact on the best  
43 interests of the child of the parent's past or possible future deployment.

44 3. In any proceeding under this chapter, the court, at any stage of the proceedings after final  
45 judgment, may make orders about what security is to be given for the care, custody, and support of  
46 the unmarried minor children of the marriage as from the circumstances of the parties and the nature  
47 of the case is equitable.

48  
49 Section 4. [*Limitations on post judgment modifications of primary residential responsibility.*]

1           1. Unless agreed to in writing by the parties, or if included in the parenting plan, no motion  
2 for an order to modify primary residential responsibility may be made earlier than two years after the  
3 date of entry of an order establishing primary residential responsibility, except in accordance with  
4 subsection 3.

5           2. Unless agreed to in writing by the parties, or if included in the parenting plan, if a motion  
6 for modification has been disposed of upon its merits, no subsequent motion may be filed within two  
7 years of disposition of the prior motion, except in accordance with subsection 5.

8           3. The time limitation in subsections 1 and 2 does not apply if the court finds:

9               a. The persistent and willful denial or interference with parenting time;

10              b. The child's present environment may endanger the child's physical or emotional  
11 health or impair the child's emotional development; or

12              c. The primary residential responsibility for the child has changed to the other parent  
13 for longer than six months.

14           4. A party seeking modification of an order concerning primary residential responsibility  
15 shall serve and file moving papers and supporting affidavits and shall give notice to the other party  
16 to the proceeding who may serve and file a response and opposing affidavits. The court shall  
17 consider the motion on briefs and without oral argument or evidentiary hearing and shall deny the  
18 motion unless the court finds the moving party has established a prima facie case justifying a  
19 modification. The court shall set a date for an evidentiary hearing only if a prima facie case is  
20 established.

21           5. The court may not modify the primary residential responsibility within the two-year period  
22 following the date of entry of an order establishing primary residential responsibility unless the court  
23 finds the modification is necessary to serve the best interests of the child and:

24               a. The persistent and willful denial or interference with parenting time;

25              b. The child's present environment may endanger the child's physical or emotional  
26 health or impair the child's emotional development; or

27              c. The residential responsibility for the child has changed to the other parent for  
28 longer than six months.

29           6. The court may modify the primary residential responsibility after the two-year period  
30 following the date of entry of an order establishing primary residential responsibility if the court  
31 finds:

32               a. On the basis of facts that have arisen since the prior order or which were unknown  
33 to the court at the time of the prior order, a material change has occurred in the circumstances  
34 of the child or the parties; and

35               b. The modification is necessary to serve the best interest of the child.

36           7. The court may modify a prior order concerning primary residential responsibility at any  
37 time if the court finds a stipulated agreement by the parties to modify the order is in the best interest  
38 of the child.

39           8. Upon a motion to modify primary residential responsibility under this section, the burden  
40 of proof is on the moving party.

41  
42           Section 5. [*Remedies for noncompliance.*]

43           In addition to other remedies under law of this state other than this chapter, if a court finds  
44 that a party to a proceeding under this chapter has acted in bad faith or intentionally failed to comply  
45 with this chapter or a court order issued under this chapter, the court may assess reasonable  
46 attorney's fees and costs against the party and order other appropriate relief.

47  
48           Section 6. [*Notification required of deploying or redeploying parent.*]

1           1. Except as otherwise provided in subsection 4 and subject to subsection 3, a deploying  
2 parent shall notify in a record the other parent of a pending deployment or redeployment not later  
3 than seven days after receiving notice of deployment or redeployment unless reasonably prevented  
4 from doing so by the circumstances of service. If the circumstances of service prevent giving  
5 notification within the seven days, the deploying or redeploying parent shall give the notification as  
6 soon as reasonably possible.

7           2. Except as otherwise provided in subsection 4 and subject to subsection 3, each parent shall  
8 provide in a record the other parent with a plan for fulfilling that parent's share of custodial  
9 responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible  
10 after notification of deployment is given under subsection 1.

11           3. If a court order currently in effect prohibits disclosure of the address or contact  
12 information of the other parent, notification of deployment under subsection 1, or notification of a  
13 plan for custodial responsibility during deployment under subsection 2, may be made only to the  
14 issuing court. If the address of the other parent is available to the issuing court, the court shall  
15 forward the notification to the other parent. The court shall keep confidential the address or contact  
16 information of the other parent.

17           4. Notification in a record under subsection 1 or 2 is not required if the parents are living in  
18 the same residence and both parents have actual notice of the deployment or plan.

19           5. In a proceeding regarding custodial responsibility, a court may consider the reasonableness  
20 of a parent's efforts to comply with this section.

21  
22           Section 7. [*Duty to notify of change of address.*]

23           1. Except as otherwise provided, an individual to whom custodial responsibility has been  
24 granted during deployment shall notify the deploying parent and any other individual with custodial  
25 responsibility of a child of any change of the individual's mailing address or residence until the grant  
26 is terminated. The individual shall provide the notice to any court that has issued a custody or child  
27 support order concerning the child which is in effect.

28           2. If a court order currently in effect prohibits disclosure of the address or contact  
29 information of an individual to whom custodial responsibility has been granted, a notification under  
30 subsection 1 may be made only to the court that issued the order. The court shall keep confidential  
31 the mailing address or residence of the individual to whom custodial responsibility has been granted.  
32

33           Section 8. [*Nature of authority created by agreement.*]

34           1. An agreement is temporary and terminates after the deploying parent returns from  
35 deployment, unless the agreement has been terminated before that time by court order or  
36 modification. The agreement does not create an independent, continuing right to caretaking  
37 authority, decision making authority, or limited contact in an individual to whom custodial  
38 responsibility is given.

39           2. A nonparent who has caretaking authority, decision making authority, or limited contact  
40 by an agreement has standing to enforce the agreement until it has been terminated by court order,  
41 by modification under section  
42

43           Section 9. [*Modification of agreement.*]

44           1. By mutual consent, the parents of a child may modify an agreement regarding custodial  
45 responsibility.

46           2. If an agreement is modified before deployment of a deploying parent, the modification  
47 must be in writing and signed by both parents and any nonparent who will exercise custodial  
48 responsibility under the modified agreement.

1           3. If an agreement is modified during deployment of a deploying parent, the modification  
2 must be agreed to in a record by both parents and any nonparent who will exercise custodial  
3 responsibility under the modified agreement.  
4

5           Section 10. [*Power of attorney.*]

6           A deploying parent, by power of attorney, may delegate all or part of custodial responsibility  
7 to an adult nonparent for the period of deployment if no other parent possesses custodial  
8 responsibility under law of this state other than this chapter, or if a court order currently in effect  
9 prohibits contact between the child and the other parent. The deploying parent may revoke the power  
10 of attorney by signing a revocation of the power.  
11

12           Section 11. [*Filing agreement or power of attorney with court.*]

13           An agreement or power of attorney must be filed within a reasonable time with any court that  
14 has entered an order on custodial responsibility or child support that is in effect concerning the child  
15 who is the subject of the agreement or power. The case number and heading of the pending case  
16 concerning custodial responsibility or child support must be provided to the court with the agreement  
17 or power.  
18

19           Section 11. [*Proceeding for temporary custody order.*]

20           1. After a deploying parent receives notice of deployment and until the deployment  
21 terminates, a court may issue a temporary order granting custodial responsibility unless prohibited  
22 by the federal Service members Civil Relief Act [50 U.S.C. appendix sections 521 and 522]. A  
23 court may not issue a permanent order granting custodial responsibility without the consent of the  
24 deploying parent.

25           2. At any time after a deploying parent receives notice of deployment, either parent may file  
26 a motion regarding custodial responsibility of a child during deployment. The motion must be filed  
27 in a pending proceeding for custodial responsibility in a court with jurisdiction.  
28

29           Section 12. [*Expedited hearing.*]

30           If a motion to grant custodial responsibility is filed before a deploying parent deploys, the  
31 court shall conduct an expedited hearing.  
32

33           Section 13. [*Grant of caretaking or decision making authority to nonparent.*]

34           1. On motion of a deploying parent and in accordance with the laws of this state other than  
35 this chapter, if it is in the best interests of the child, a court may grant caretaking authority to a  
36 nonparent who is an adult family member of the child or an adult with whom the child has a close  
37 and substantial relationship.

38           2. Unless a grant of caretaking authority to a nonparent is agreed to by the other parent, the  
39 grant is limited to an amount of time not greater than:

40           a. The amount of time granted to the deploying parent under a permanent custodial  
41 order, but the court may add unusual travel time necessary to transport the child; or

42           b. In the absence of a permanent custody order that is currently in effect, the amount  
43 of time that the deploying parent habitually cared for the child before being notified of  
44 deployment, but the court may add unusual travel time necessary to transport the child.

45           3. A court may grant part of a deploying parent's decision making authority, if the deploying  
46 parent is unable to exercise that authority, to a nonparent who is an adult family member of the child  
47 or an adult with whom the child has a close and substantial relationship. If a court grants the  
48 authority to a nonparent, the court shall specify the decision making powers granted, including

1 decisions regarding the child's education, religious training, health care, extracurricular activities,  
2 and travel.

3  
4 Section 14. [*Grant of limited contact.*]

5 On motion of a deploying parent, and in accordance with the laws of this state other than this  
6 chapter, unless the court finds that the contact would be contrary to the best interests of the child, a  
7 court shall grant limited contact to a nonparent who is a family member of the child or an individual  
8 with whom the child has a close and substantial relationship.

9  
10 Section 15. [*Nature of authority created by temporary custody order.*]

11 1. A grant of authority under is temporary and terminates after the return from deployment of  
12 the deploying parent, unless the grant has been terminated before that time by court order. The grant  
13 does not create an independent, continuing right to caretaking authority, decision making authority,  
14 or limited contact in an individual to whom it is granted.

15 2. A nonparent granted caretaking authority, decision making authority, or limited contact  
16 under has standing to enforce the grant until it is terminated by court.

17  
18 Section 16. [*Content of temporary custody order.*]

19 1. An order granting custodial responsibility must:

- 20 a. Designate the order as temporary; and  
21 b. Identify to the extent feasible, the destination, duration, and conditions of the  
22 deployment.

23 2. If applicable, an order for custodial responsibility must:

24 a. Specify the allocation of caretaking authority, decision making authority, or limited  
25 contact among the deploying parent, the other parent, and any nonparent;

26 b. If the order divides caretaking or decision making authority between individuals, or  
27 grants caretaking authority to one individual and limited contact to another, provide a process  
28 to resolve any dispute that may arise;

29 c. Provide for liberal communication between the deploying parent and the child  
30 during deployment, including through electronic means, unless contrary to the best interests  
31 of the child, and allocate any costs of communications;

32 d. Provide for liberal contact between the deploying parent and the child during the  
33 time the deploying parent is on leave or otherwise available, unless contrary to the best  
34 interests of the child;

35 e. Provide for reasonable contact between the deploying parent and the child after  
36 return from deployment until the temporary order is terminated, even if the time of contact  
37 exceeds the time the deploying parent spent with the child before entry of the temporary  
38 order; and

39 f. Provide that the order will terminate after the deploying parent returns from  
40 deployment.

41  
42 Section 17. [*Order for child support.*]

43 If a court has issued an order granting caretaking authority or an agreement granting  
44 caretaking authority has been executed the court may enter a temporary order for child support  
45 consistent with the laws of this state.

46  
47 Section 18. [*Modifying or terminating grant of custodial responsibility to nonparent.*]

48 1. Except for an order consistent with the federal Service members Civil Relief Act, [50  
49 U.S.C. appendix [sections 521 and 522], on motion of a deploying or other parent or any nonparent

1 to whom caretaking authority, decision making authority, or limited contact has been granted, the  
2 court may modify or terminate the grant if the modification or termination is consistent with and it is  
3 in the best interests of the child. A modification is temporary and terminates after the deploying  
4 parent returns from deployment, unless the grant has been terminated before that time by court order.

5 2. On motion of a deploying parent, the court shall terminate a grant of limited contact.  
6

7 Section 19. [*Procedure for terminating temporary grant of custodial responsibility*  
8 *established by agreement.*]

9 1. At any time after return from deployment, a temporary agreement granting custodial  
10 responsibility may be terminated by an agreement to terminate signed by the deploying parent and  
11 the other parent.

12 2. A temporary agreement terminates:

13 a. If an agreement to terminate under subsection 1 specifies a date for termination, on  
14 that date; or

15 b. If the agreement to terminate does not specify a date, on the date the agreement to  
16 terminate is signed by the deploying parent and the other parent.

17 3. In the absence of an agreement under subsection 1 to terminate, a temporary agreement  
18 granting custodial responsibility terminates sixty days after the deploying parent gives notice to the  
19 other parent that the deploying parent returned from deployment.

20 4. If a temporary agreement granting custodial responsibility was filed with a court an  
21 agreement to terminate the temporary agreement also must be filed with that court within a  
22 reasonable time after the signing of the agreement. The case number and heading of the case  
23 concerning custodial responsibility or child support must be provided to the court with the agreement  
24 to terminate.  
25

26 Section 20. [*Consent procedure for terminating temporary grant of custodial responsibility*  
27 *established by court order.*]

28 At any time after a deploying parent returns from deployment, the deploying parent and the other  
29 parent may file with the court an agreement to terminate a temporary order for custodial  
30 responsibility. After an agreement has been filed, the court shall issue an order terminating the  
31 temporary order effective on the date specified in the agreement. If a date is not specified, the order  
32 is effective immediately.  
33

34 Section 21. [*Visitation before termination of temporary grant of custodial responsibility.*]

35 After a deploying parent returns from deployment until a temporary agreement or order for  
36 custodial responsibility is established or is terminated, the court shall issue a temporary order  
37 granting the deploying parent reasonable contact with the child unless it is contrary to the best  
38 interests of the child, even if the time of contact exceeds the time the deploying parent spent with the  
39 child before deployment.  
40

41 Section 22. [*Termination by operation of law of temporary grant of custodial responsibility*  
42 *established by court order.*]

43 1. If an agreement between the parties to terminate a temporary order for custodial  
44 responsibility has not been filed, the order terminates sixty days after the deploying parent gives  
45 notice to the other parent and any nonparent granted custodial responsibility that the deploying  
46 parent has returned from deployment.

47 2. A proceeding seeking to prevent termination of a temporary order for custodial  
48 responsibility is governed by law of this state other than this chapter.



- 1 Section 22. [*Severability clause.*] Insert severability clause.
- 2
- 3 Section 23. [*Repealer clause.*] Insert repealer clause.
- 4
- 5 Section 24. [*Effective date.*] Insert effective date.