

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1217 Deployed Parent Custody and Visitation

SPONSOR(S): Civil Justice & Claims Subcommittee; Metz

TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1598

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	12 Y, 0 N, As CS	Tuszynski	Bond
2) Local, Federal & Veterans Affairs Subcommittee	11 Y, 0 N	Rivera	Miller
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law allows for the filing of a petition or motion for modification of time-sharing and parental responsibility when a parent is activated, deployed, or temporarily assigned to military service and that parent's ability to comply with time-sharing is materially affected. The law allows a deployed parent to designate a person or persons to exercise time-sharing with the child on the parent's behalf. This is limited to a family member, stepparent, or relative of the child by marriage.

The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) addresses issues of child custody and visitation that arise when parents are deployed in military or other national service. The Uniform Law Commission finalized the UDPVA in 2012. Thirteen states have enacted the UDPVA.

HB 1217 creates the "Uniform Deployed Parents Custody and Visitation Act" in Florida. The bill contains definitions and provisions that apply generally to custody matters of service members. It includes a notice provision requiring parents to communicate about custody and visitation issues as soon as possible after a service member learns of deployment.

The bill contains provisions dealing with custody issues that arise on notice of and during deployment. The bill outlines an easy procedure for parents who agree to a custody arrangement during deployment to resolve these issues by an out-of-court agreement, and details what must be in that agreement. The bill allows a deployed parent to grant caretaking authority to a nonparent to whom the child has a close and substantial relationship. In the absence of the parents reaching an agreement, the bill allows for an expedited resolution of a custody arrangement in court with a temporary custody order. The bill declares that no permanent custody order can be entered before or during deployment without the service member's consent.

The bill contains provisions detailing how to terminate the temporary custody arrangement following return from deployment.

The bill also repeals the section of law that currently addresses temporary time-sharing modification and child support modification due to military service.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

"The increased deployment of service members has raised difficult child custody issues that profoundly affect both children's welfare and service members' ability to serve their country efficiently."¹ Because a significant proportion of service members are single parents, the Department of Defense indicates that problems related to child custody and visitation while the parent is deployed detrimentally impact overall military effort.²

Federal Law

The only existing federal statutory protection for single-parent service members is the Servicemembers Civil Relief Act (SCRA), which governs the general legal rights of a deploying service member.³ Under the SCRA, judges must grant stays of legal proceedings, including custody proceedings, when military service materially affects the service member's ability to participate in the proceedings.⁴ Yet such stays are mandatory only for the first 90 days after deployment.⁵ After that time passes, entry of such stays are discretionary.⁶ The SCRA does not provide procedures to facilitate entry of a temporary custody arrangement or give guidance on how to balance service members' interests against other relevant interests, including the best interests of the child.⁷

State Law

Issues of child custody and visitation are the proper province of state law. However, state statutes and courts vary considerably in their approach to custody issues on a parent's deployment.⁸ Many courts will grant custody to the other natural parent for the duration of the deployment, even over the wishes of the deploying parent, while other courts will grant custody to the person that the service member wishes to designate as custodian, such as a grandparent.⁹ Further, at the end of a deployment, some courts have been reluctant to return custody to the deploying parent.¹⁰

Florida Law

Custody and time-sharing in relation to military service is governed by s. 61.13002, F.S., which allows for the filing of a petition or motion for modification of time-sharing and parental responsibility when a parent is activated, deployed, or temporarily assigned to military service and that parent's ability to comply with time-sharing is materially affected.¹¹ Generally, the court is not able to issue an order or modify a previous judgment or order that changes time-sharing as it existed on the date the parent was activated, deployed, or temporarily assigned.¹² However, the court may enter a temporary order to

¹ National Conference of Commissioners on Uniform State Laws, *Deployed Parents Custody and Visitation Act Summary*, available at: <http://www.uniformlaws.org/ActSummary.aspx?title=Deployed%20Parents%20Custody%20and%20Visitation%20Act> (last accessed January 25, 2018).

² *Id.*

³ 50 U.S.C. App. ss. 5011-597b

⁴ *Id.*

⁵ *Id.*

⁶ *Supra*, FN 1.

⁷ *Id.*

⁸ *Supra*, FN 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ s. 39.13002(1), F.S.

¹² *Id.*

modify or amend time-sharing if there is clear and convincing evidence that the temporary modification is in the best interests of the child.¹³ The court may address support by either:

1. Ordering temporary support from the servicemember to the other parent;
2. Requiring the servicemember to enroll the child as a military dependent for benefits available to military dependents; or
3. Suspend, abate, or reduce the child support obligation of the nonservice member until the previous order in effect is reinstated.¹⁴

The law allows a deployed parent on orders in excess of 90 days to designate a person or persons to exercise time-sharing with the child on the parent's behalf.¹⁵ This is limited to a family member, stepparent, or relative of the child by marriage.¹⁶ The other parent may only object on the basis that the designee's time-sharing is not in the best interest of the child.¹⁷ The law excludes permanent change of station moves by servicemembers.¹⁸

The law also requires the court to:

- Allow the servicemember to testify by telephone, video, webcam, affidavit, or other means if a motion is filed and the servicemember is unable to appear in person;¹⁹ and
- Reinstatement the time-sharing order previously in effect upon the servicemember's return.²⁰

Uniform Deployed Parents Custody and Visitation Act (2012)

The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) addresses issues of child custody and visitation that arise when parents are deployed in military or other national service.²¹ The UDPVA was created by the Uniform Law Commission in 2012 and has been approved by the American Bar Association, the American Academy of Matrimonial Lawyers, and the Council of State Governments.²² The UDPVA has been enacted by 13 states,²³ and has been introduced in Pennsylvania and Florida this year.²⁴

Effect of Proposed Changes

HB 1217 creates part IV of ch. 61, F.S, entitled "Uniform Deployed Parents Custody and Visitation Act." (Act) The act contains definitions and provisions relating to general custody matters for service members, custody issues upon deployment, expedited resolution of custody issues, and termination of the temporary custody arrangement.

General Provisions

Definitions

The bill defines common terms as used in the Act, including "adult," "child," and "court." The bill also defines multiple terms that are unique to the provisions of the Act:

¹³ Id.

¹⁴ s. 61.13002(6), F.S.

¹⁵ s. 61.13002(2), F.S.

¹⁶ Id.

¹⁷ Id.

¹⁸ s. 61.13002(7), F.S.

¹⁹ s. 61.13002(5), F.S.

²⁰ s. 61.13002(4), F.S.

²¹ Uniform Law Commission, *Legislative Fact Sheet - Deployed Parents Custody and Visitation Act*, available at:

<http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Deployed%20Parents%20Custody%20and%20Visitation%20Act> (last accessed January 25, 2018).

²² Id.

²³ Arkansas, Colorado, Iowa, Minnesota, Nebraska, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Utah, and West Virginia.

²⁴ Supra, FN 21

- "Servicemember" means a member of a uniformed service.
 - "Uniformed service" means: active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard; United States Merchant Marine; commissioned corps of the United States Public Health Service; commissioned corps of the National Oceanic and Atmospheric Administration; and the National Guard of a state or territory of the United States, Puerto Rico, or the District of Columbia.
- "Deployment" means the movement or mobilization of a servicemember for more than 90 days but less than 18 months pursuant to uniformed service orders that are designated as unaccompanied, do not authorize dependent travel, or otherwise do not permit the movement of family members to the location to which the servicemember is deployed.
- "Custodial responsibility" means all powers and duties relating to caretaking authority and decisionmaking authority for a child. The term includes physical custody, legal custody, parenting time, right to access, visitation, and authority to grant limited contact with a child.
 - "Caretaking authority" is a subset of "custodial responsibility" and means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access, and visitation.
 - "Decisionmaking authority" is a subset of "custodial responsibility" and means the power to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority.
- "Close and substantial relationship" means a relationship in which a significant bond exists between a child and a nonparent.
 - "Nonparent" means an individual other than a deploying parent or other parent.
- "Limited contact" means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the child's residence.

Jurisdiction

The bill allows any court that has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)²⁵ to issue an order regarding custodial responsibility. For purposes of the UCCJEA, the residence of the deploying parent does not change due to that deployment if a court:

- Has issued a temporary order regarding custodial responsibility;
- Has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order by temporary agreement; or
- In another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment.

The bill does not prevent a court from exercising temporary emergency jurisdiction under the UCCJEA.

Notice Requirements

The bill requires a deploying parent to notify the other parent of a pending deployment no later than 7 days after receiving notice of the deployment, unless he or she is reasonably prevented from doing so, in which case the deploying parent must provide notice as soon as reasonably possible. The bill also requires the deploying parent to notify the other parent of a plan fulfilling each parent's share of

²⁵ The UCCJEA is a uniform law adopted by all states, except Massachusetts, that limits the state with jurisdiction over child custody to one, which avoids competing custody orders. It also provides enforcement provisions for child custody orders and the ability to exercise emergency jurisdiction if needed.

custodial responsibility during deployment as soon as reasonably possible after notice of deployment. The bill allows this notice to be provided to the issuing court if a court order prohibits disclosure of the address or contact information of the other parent. If the address of the other parent is available to the issuing court, the court shall forward the notice to the other parent, and keep confidential the address or contact information of the other parent. The bill does not require this notice if both parents are living in the same residence and have actual notice of the deployment or plan.

The bill requires an individual granted custodial responsibility during deployment to notify the deploying parent, any other individual with custodial responsibility of a child, and the court of any change of mailing address or residence, unless a court order prohibits disclosure of the address.

Custodial Responsibility Agreements

Form of Custodial Responsibility Agreement

The bill allows parents to enter into a temporary agreement granting custodial responsibility during deployment. The agreement must be written and signed by both parents and any nonparent granted custodial responsibility. The agreement, if feasible, must:

- Identify location, duration, and conditions of deployment;
- Specify the allocation of caretaking authority, any decisionmaking authority that accompanies that caretaking authority among the parties to the agreement and any grant of limited contact to a nonparent;
- Provide a process to resolve any dispute that may arise;
- Specify the frequency, duration, and means, including electronic, by which a deploying parent will have contact with the child, any role to be played by the other parent or nonparent in facilitating that contact, and allocate any costs of that contact;
- Acknowledge the agreement does not modify any existing child support obligation;
- Provide that the agreement will terminate according to the Act after the deploying parent returns from deployment; and
- Specify which parent is required to file the agreement, if the agreement must be filed with a court that has entered an order relating to custody or child support of the child.

However, the omission of any of these terms does not invalidate the agreement.

Nature of Authority Created by Custodial Responsibility Agreement

The bill specifies that the Custodial Responsibility Agreement does not create an independent, continuing right to caretaking authority, decisionmaking authority, or limited contact. A nonparent has standing to enforce the agreement until it is terminated.

Modification of Agreement

The bill allows the parents of a child to modify an agreement granting custodial responsibility by mutual consent. If an agreement is modified before deployment of a deploying parent, the modification must be in writing and signed by both parents and any nonparent granted custodial responsibility under the modified agreement. If the agreement is modified during deployment of a deploying parent, the modification must be agreed to in some record by both parents and any nonparent granted custodial responsibility.

Power of Attorney

The bill allows a deploying parent, by power of attorney, to grant all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power by signing a revocation of the power of attorney.

Filing Custodial Responsibility Agreement or Power of Attorney

The bill requires any agreement or power of attorney be filed within reasonable time with a court that has entered an order in effect relating to custody or child support. The case number and heading of the pending case must be provided to the court with the agreement or power of attorney.

Temporary Custody

Temporary Custody Order

The bill allows a court to issue a temporary order granting custodial responsibility, after a deploying parent receives notice of deployment, unless prohibited by the SCRA. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

Either parent may file a motion regarding custodial responsibility of a child during deployment. The motion must be filed in a pending proceeding for custodial responsibility in a court with jurisdiction, if a pending proceeding does not exist in a court with jurisdiction, the motion must be filed as a new action. If a motion to grant custodial responsibility is filed before a deploying parent deploys, the court shall conduct an expedited hearing. The bill allows for testimony by electronic means unless the court finds good cause to require in-person testimony.

A prior judicial order granting custodial responsibility is binding on the court unless circumstances meet the requirements authorized by general law to modify a judicial order regarding custodial responsibility. The court must enforce a prior written agreement between the parties, unless the court finds that the agreement is not in the best interest of the child.

Grant of Caretaking Authority to Nonparent

The bill allows a court, upon the request of a deploying parent, in the best interests of the child, to 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 relationship. Unless agreed to by the other parent, the grant of caretaking authority may not exceed the amount of time granted to the deploying parent under a permanent custody order, or in the absence of a permanent custody order, the amount of time the deploying parent habitually cared for the child before being notified of deployment. However, the court may add travel time necessary to transport the child.

If the deploying parent is unable to exercise decisionmaking authority, a court may grant part of that authority to a nonparent, but must specify the decisionmaking powers granted.

The court must grant limited contact to a nonparent who is a family member of the child or an individual with whom the child has a close and substantial relationship on motion of a deploying parent unless the court finds that limited contact with a nonparent would not be in the best interest of the child.

Any grant of authority to a nonparent is temporary and terminates after the deploying parent returns from deployment.

Content of Temporary Custody Order

An order granting custodial responsibilities, must:

- Designate the order as temporary and provide for termination after the deploying parent returns from deployment;
- Identify 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.

- 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 it is not in the best interest of the child, and allocate any costs of communication;
- Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless it is not in the best interest of the child; and
- Provide for reasonable contact between the deploying parent and the child after the parent's 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.

Order for Child Support

The bill allows the court to enter a temporary order for child support authorized by general law if the court has jurisdiction.

Modifying or Terminating Grant of Custodial Responsibility or Limited Contact to Nonparent

The bill allows a court to modify or terminate a temporary grant of custodial responsibility on the motion of a deploying parent, other parent, or any nonparent granted caretaking authority if the modification or termination is in the best interest of the child. A modification is temporary and terminates after the deploying parent returns from deployment. The court must terminate a grant of limited contact on motion of a deploying parent.

Procedure for Terminating Temporary Agreement Granting Custodial Responsibility

The bill details the procedure for terminating a Temporary Agreement Granting Custodial Responsibility. The procedure requires, after a deploying parent returns from deployment, a deploying parent and the other parent to file an agreement to terminate a temporary order for custodial responsibility. After an agreement to terminate has been filed, it must terminate on the date specified on the agreement or on the date the agreement is signed by the deploying parent and the other parent if the agreement to terminate does not specify a date.

In the absence of an agreement to terminate, a temporary agreement granting custodial responsibility terminates 60 days after the deploying parent gives notice of return from deployment to the other parent. If a temporary agreement granting custodial responsibility was filed with a court, an agreement to terminate must be filed with the court within a reasonable time after the deploying parent and other parent sign the agreement.

A proceeding to prevent the termination of a temporary orders is governed by general law.

Other

The bill requires a court to issue a temporary order granting the deploying parent reasonable contact with the child from the time he or she returns from deployment until a temporary agreement or order is terminated, even if contact exceeds the time the deploying parent spent with the child before deployment unless it is not in the best interest of the child.

The bill allows for reasonable attorney fees and costs be awarded against a party who acts in bad faith or intentionally fails to comply with the provisions of the Act or a court order issued under the Act.

The bill does not allow a court to consider past deployment or possible future deployment when determining the best interest of the child in a proceeding for custodial responsibility under the Act. However, the court may consider the reasonableness of the deploying parent's efforts to notify the other parent of deployment orders in a proceeding regarding custodial responsibility.

The bill does not affect validity of temporary court orders entered before July 1, 2018.

The bill repeals s. 61.13002, F.S., related to temporary time-sharing modification and child support modification due to military service.

The bill is effective July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Creates Part IV of chapter 61, F.S, relating to uniform deployed parents visitation and custody act.

Section 2: Repeals s. 61.13002, F.S., relating to temporary time-sharing modification and child support modification due to military service.

Section 3: Provides and effective date of July 1, 2018

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

The United States Supreme Court has recognized the fundamental liberty interest parents have in the 'care, custody and management' of their children.²⁶ The Florida Supreme Court has likewise

²⁶ *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Santosky v. Kramer*, 455 U.S. 745 (1982).

recognized that decisions relating to child rearing and education are clearly established as fundamental rights within the Fourteenth Amendment of the United States Constitution and that the fundamental liberty interest in parenting is specifically protected by the privacy provision in the Florida Constitution.²⁷ Consequently, any statute that infringes these rights is subject to the highest level of scrutiny and must serve a compelling state interest through the least intrusive means necessary.²⁸

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 23, 2018, the Civil Justice & Claims Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment repeals the current statute related to temporary time-sharing modification and child support modification due to military service, as the bill is drafted to replace this section.

This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.

²⁷ *Beagle v. Beagle*, 678 So. 2d 1271, 1275 (Fla. 1996). Art. I, s. 23, Fla. Const. provides "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law."

²⁸ *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 637 (Fla. 1980); *Belair v. Drew*, 776 So. 2d 1105, 1107 (Fla. 5th DCA 2001); *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Business Regulation*, 477 So. 2d 544, 547 (Fla. 1985).