

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): Judiciary Committee; Civil Justice & Claims Subcommittee; Metz and others

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	20 Y, 0 N, As CS	Tuszynski	Poche

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 such service has a material effect on a parent's ability to comply with time-sharing. The law allows a deployed parent to designate a person or persons to exercise time-sharing with the child on the parent's behalf. The designee must be 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 UDPCVA in 2012. Thirteen states have enacted the UDPCVA.

CS/CS/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 servicemembers. It includes a notice provision requiring parents to communicate about custody and visitation issues as soon as possible after a servicemember learns of 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 the agreement. The bill allows a deployed parent to grant caretaking authority to a nonparent with whom the child has a close positive relationship of substantial duration and depth. In the absence of an agreement, the bill allows for expedited resolution of a custody arrangement in court with a temporary custody order. The bill prohibits the entry of a permanent custody order before or during deployment without the service member's consent.

The bill provides for termination of the temporary custody arrangement following the servicemember's 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 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, a judge must grant a stay of legal proceedings, including custody proceedings, when military service materially affects the service member's ability to participate in the proceedings.⁴ A stay is mandatory for the first 90 days after deployment.⁵ Following that time, a stay may be entered at the judge's discretion.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

Uniform Deployed Parents Custody and Visitation Act (2012)

Statutes and courts around the United States differ in their approach to custody and time-sharing issues when a parent deploys for military service.⁸ Many courts around the country will grant custody to a non-deployed spouse for the duration of the servicemember's deployment, while other courts will grant custody or time-sharing to a person designated by the servicemember. At the end of a servicemember's deployment, some courts have been reluctant to return custody to the deployed parent.⁹

The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) was created in 2012 by the Uniform Law Commission to address issues of child custody and visitation that arise when a parent deploys for military or other national service.¹⁰ The American Bar Association, the American Academy of Matrimonial Lawyers, and the Council of State Governments have all approved the Act.¹¹ Thirteen states have enacted the UDPCVA, with Florida and Pennsylvania introducing it this year.¹²

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 February 1, 2018).

² *Id.*

³ 50 U.S.C. App. §§ 5011-597b

⁴ *Id.*

⁵ *Id.*

⁶ *Supra*, FN 1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ 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 February 1, 2018).

¹¹ *Id.*

¹² *Supra*, FN 10; Arkansas, Colorado, Iowa, Minnesota, Nebraska, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Utah, and West Virginia.

Florida Law

Section 61.13002, F.S., governs custody and time-sharing for servicemembers when they are activated, deployed, or temporarily assigned to military service and it has a material effect on that parent's ability to comply with time-sharing.¹³ Generally, the court is not able to issue or modify an order or judgment that changes time-sharing as it existed on the date the parent was activated, deployed, or temporarily assigned.¹⁴ However, the court may enter a temporary order to modify or amend time-sharing if there is clear and convincing evidence the temporary modification is in the best interests of the child.¹⁵ The law allows a court to address child support by:

- Ordering temporary support;
- Requiring the servicemember to enroll the child as a military dependent for benefits available to military dependents; or
- Suspend, abate, or reduce the child support obligation until reinstatement of the previous order.¹⁶

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.¹⁷ This is limited to a family member, stepparent, or relative of the child by marriage.¹⁸ The other parent may only object on the basis that the designee's time-sharing is not in the best interest of the child.¹⁹ The law does not apply to permanent change of station moves by servicemembers, covered by the parental relocation statute.²⁰

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;²¹ and
- Reinstate the time-sharing order previously in effect upon the servicemember's return.²²

Effect of Proposed Changes

CS/CS/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 unique to the provisions of the Act:

- "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

¹³ S. 39.13002(1), F.S.

¹⁴ Id.

¹⁵ Id.

¹⁶ S. 61.13002(6), F.S.

¹⁷ S. 61.13002(2), F.S.

¹⁸ Id.

¹⁹ Id.

²⁰ S. 61.13002(7), F.S.; S. 61.13001, F.S.

²¹ S. 61.13002(5), F.S.

²² S. 61.13002(4), F.S.

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.

- "Notice of deployment" means official notification to a servicemember, through orders or other written or electronic communication from higher authority, that the servicemember is subject to deployment on or about a specified date.
- "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 positive relationship of substantial duration and depth in which a significant bond exists between a child and a nonparent.
 - "Nonparent" means an individual other than a deploying parent or other parent.

Jurisdiction

The bill allows any court with jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)²³ to issue an order regarding custodial responsibility. For purposes of the UCCJEA, the residence of the deploying parent does not change due to deployment if a court has issued a temporary order regarding custodial responsibility or a permanent order regarding custodial responsibility and the parents modify that order by temporary agreement.

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.
- A plan fulfilling each parent's share of custodial responsibility during deployment as soon as reasonably possible after notice of deployment.

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

The bill allows notice to a court if a court order prohibits disclosure of the address or contact information of the other parent, and the court must forward the notice to the other parent, and keep confidential the address or contact information. 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.

²³ 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 Agreements

The bill allows parents to enter into a temporary agreement granting custodial responsibility during deployment without a court order. An agreement must be written and signed by both parents and any nonparent granted custodial responsibility, and must also:

- 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 contact, and allocate any costs of 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.

The omission of any of these terms does not invalidate an agreement.

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

Modification of Agreement

The bill allows the parents of a child to modify a temporary agreement by mutual consent. If an agreement is modified before deployment, 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, the modification must be agreed to in some record by both parents and any nonparent granted custodial responsibility.²⁴

Power of Attorney

The bill allows a deploying parent, by power of attorney, to grant all or part of their 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

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

²⁴ The Act defines "record" as information that is created in a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.

Either parent may file a motion regarding custodial responsibility of a child during deployment. The motion must be filed in a pending proceeding, if a pending proceeding does not exist in a court with jurisdiction, the motion must be filed as a new action. If the motion 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 that court is 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 the agreement is not in the best interest of the child.

Grant of Caretaking Authority to a Nonparent

The bill allows a court, upon request of the deploying parent, 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 if the court finds it in the best interests of the child. Unless agreed to by the other parent, this 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.

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

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 such contact would not be in the best interest of the child.

Any grant of authority to a nonparent must be narrowly tailored to the reasonably foreseeable needs of the child during the time the deploying parent is unable to exercise such authority and terminates upon agreement of the parents or after the deploying parent returns from deployment.

Required 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. The order must also:

- 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, including through electronic means, unless it is not in the best interest of the child, and allocate costs;
- 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.

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

The bill allows a written agreement between the deploying parent and the other parent to terminate a grant of decisionmaking authority to a nonparent and for the court to modify the temporary grant based on that agreement. The bill also 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.

When both parents agree to terminate a temporary grant of authority to a nonparent, the parents may agree on alternative arrangements for custodial responsibility or seek alternative arrangements for custodial responsibility with the court.

Procedure for Terminating Temporary Agreement Granting Custodial Responsibility

The bill provides the procedure for terminating a Temporary Agreement Granting Custodial Responsibility, requiring 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 in the agreement or, if it does not specify a date, on the date both parents signed the agreement.

In the absence of an agreement, a temporary agreement granting custodial responsibility terminates 30 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, the agreement to terminate must be filed with the court within a reasonable time after both parents sign the agreement.

Other

The bill:

- Allows a court, with jurisdiction, to enter a temporary order for child support as authorized by general law;
- 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 termination of a temporary agreement, unless it is not in the best interest of the child;
- Allows 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;
- Prohibits a court from considering past deployment or possible future deployment when determining the best interest of the child; and
- Repeals s. 61.13002, F.S., related to temporary time-sharing modification and child support modification due to military service.

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

The bill provides an effective date of 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 an 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.²⁵ The Florida Supreme Court has likewise recognized decisions relating to child rearing and education are clearly established as fundamental rights within the Fourteenth Amendment of the United States Constitution and the fundamental liberty interest in parenting is specifically protected by the privacy provision in the Florida Constitution.²⁶ 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.²⁷

B. RULE-MAKING AUTHORITY:

Not applicable.

²⁵ *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Santosky v. Kramer*, 455 U.S. 745 (1982).

²⁶ *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."

²⁷ *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).

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 repealed the current statute related to temporary time-sharing and child support modification due to military service.

On February 7, 2018, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Strengthened the ability for parents to change custodial responsibility agreements and temporary custody orders by written agreement, if the parents agree, or to seek modification orders without an agreement.
- Narrowed the ability for a court to grant decisionmaking powers to a nonparent and requires such grant to specify the duration.
- Defined "notice of deployment."
- Shortened the time, from 60 days to 30 days, in which a temporary agreement granting custodial responsibility automatically terminates after the return of a deploying parent.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.