

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1598

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Passidomo

SUBJECT: Deployed Parent Custody and Visitation

DATE: February 8, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	Favorable
3.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1598 creates the Uniform Deployed Parents Custody and Visitation Act. The act establishes a framework for resolving child custody and visitation issues when a parent is deployed in military or other forms of national service. In addition to providing definitions for the act, the bill:

- Requires parents to communicate about custody and visitation issues upon learning of an upcoming deployment.
- Addresses custody issues that arise when someone receives notice of deployment and during deployment by permitting an out-of-court agreement. If the parents do not reach an agreement, an expedited resolution of custody arrangement is available in court.
- Provides that no permanent custody order can be issued before or during deployment unless the servicemember consents.
- Governs termination of a temporary custody arrangement by written agreement between the parents or by court order.

The bill repeals s. 61.13002, F.S., pertaining to temporary time-sharing modification and child support modification due to military service. Repealing the current statute will prevent any conflicts between that section and the new act.

II. Present Situation:

Background

As military parents are deployed to serve around the world, complex child custody issues have arisen. These custody issues affect both the welfare of children and the ability of military members to serve their country. The Department of Defense has indicated that a significant number of deployed servicemembers are single parents and that related child custody and visitation issues have detrimentally impacted them and the overall war effort as these parents struggle to complete their missions.¹

The sole federal statutory scheme that protects single-parent servicemembers is the Servicemembers Civil Relief Act (SCRA)² which generally governs the legal rights of a deployed servicemember. If military service materially affects a servicemember's ability to participate in his or her legal proceedings, a judge is required to grant a stay of the proceeding, even a custody proceeding. However, these mandatory stays only cover the first 90 day period after a member is deployed. When that time period ends, stays are discretionary with the court. The stays are then often overridden when the court tries to resolve custody issues for the children involved in the legal proceedings. The SCRA does not provide procedures for a temporary custody arrangement and does not provide courts with any guidance on how to balance the best interests of the child with the servicemembers' interests.³

Under the principle of federalism,⁴ the authority to resolve child custody and visitation issues resides with the states. As a result, many states have adopted differing approaches to deal with custody issues during a deployment. Because military families are often moving from one state to another and because one parent might live in one state and the other parent might live in a different state after divorce, custody issues have become very complex.⁵

Florida Law

Section 61.13002, F.S., addresses temporary time-sharing modifications and child support modifications due to military service. The statute 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.⁶ Generally, the court may not 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.⁷ However, the court may enter a temporary order to modify or amend

¹ Uniform Law Commission, The National Conference of Commissioners on Uniform State Laws, *Deployed Parents Custody and Visitation Act Summary*, <http://uniformlaws.org/ActSummary.aspx?title=Deployed%20Parents%20Custody%20and%20Visitation%20Act> (last visited Jan. 23, 2018).

² 50 U.S.C. 3901–4043.

³ *Id.*

⁴ Federalism is defined as the legal relationship and distribution of power between federal and state governments. BLACK'S LAW DICTIONARY (10th ed. 2014).

⁵ *Supra*, note 1.

⁶ Section 61.13002(1), F.S.

⁷ *Id.*

time-sharing if there is clear and convincing evidence that the temporary modification is in the best interests of the child.⁸

If a temporary order is entered, the court may address support by either:

- Ordering temporary support from the servicemember to the other parent;
- Requiring the servicemember to enroll the child as a military dependent for benefits available to military dependents; or
- Suspending, abating, or reducing the child support obligation of the nonservicemember until the previous order in effect is reinstated.⁹

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.¹⁰ This is limited to a family member, stepparent, or relative of the child by marriage.¹¹ The other parent may only object on the basis that the designee's time-sharing is not in the best interest of the child.¹² The law excludes permanent change of station moves by servicemembers.¹³

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;¹⁴ and
- Reinstate the time-sharing order previously in effect upon the servicemember's return.¹⁵

III. Effect of Proposed Changes:

Section 61.13002, F.S., the current statute dealing with temporary time-sharing modification and child support modification due to military service, discussed in the Present Situation above, is repealed.

The bill creates the “Uniform Deployed Parents Custody and Visitation Act.” This is modeled after the Deployed Parents Custody and Visitation Act developed in 2012 by the Uniform Law Commission.¹⁶ The model act has been adopted by 13 states: Arkansas, Colorado, Iowa, Minnesota, Nebraska, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Utah, and West Virginia.¹⁷

⁸ *Id.*

⁹ Section 61.13002(6), F.S.

¹⁰ Section 61.13002(2), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ Section 61.13002(7), F.S.

¹⁴ Section 61.13002(5), F.S.

¹⁵ Section 61.13002(4), F.S.

¹⁶ The Uniform Law Commission, also known as the National Conference of Commissioners on Uniform State Laws, was established in 1892. The organization provides states with non-partisan legislation that is designed to promote uniform state laws in areas where uniformity is practical. <http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC>

¹⁷ Uniform Law Commission, The National Conference of Commissioners on Uniform State Laws, *Legislative Fact Sheet – Deployed Parents Custody and Visitation Act*, [http://uniformlaws.org/LegislativeFactSheet.aspx?title=Deployed Parents Custody and Visitation Act](http://uniformlaws.org/LegislativeFactSheet.aspx?title=Deployed%20Parents%20Custody%20and%20Visitation%20Act).

In general terms, the act provide definitions, contains provisions that apply to custody matters of servicemembers, custody issues that arise in light of and during deployment, expedited resolution of a custody arrangement in court, and termination of temporary custody arrangement upon a return from deployment.

Definitions (s. 61.703, F.S.)

The bill defines familiar terms used in the act, such as "adult," "child," and "court." The bill also defines multiple terms that are unique to 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 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" is used as an umbrella term for 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" 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" 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.

"Family member" means a sibling, aunt, uncle, cousin, stepparent, or grandparent of a child or an individual recognized by the deploying parent and the other parent to be in a familiar relationship with a child.

"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.

"Nonparent" means an individual other than a deploying parent or other parent.

"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.

Remedies for Noncompliance (s. 61.705, F.S.)

If a court finds that a party acts in bad faith or intentionally fails to comply with the act or a court order issued under the act, in addition to other remedies authorized by general law, the court may assess reasonable attorney fees and costs against the party and order other appropriate relief.

Jurisdiction (s. 61.707, F.S.)

The bill allows any court with jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)¹⁸ 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;
- A court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order by temporary agreement; or
- A court 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 Requirement for Deploying Parent (s. 61.709, F.S.)

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 is reasonably possible. The bill also requires the deploying parent to notify the other parent of a plan fulfilling each parent's share of 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.

¹⁸ 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.

Duty to Notify of change of Address (s. 61.711, F.S.)

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.

General Consideration in Custody Proceeding of Parent's Service (s. 61.713, F.S.)

A court is prohibited from considering a parent's past deployment or possible future deployment when determining the best interest of the child in a custodial responsibility proceeding.

Form of Custodial Responsibility Agreement (s. 61.721, F.S.)

Parents may enter into a temporary custodial responsibility agreement during deployment. The written agreement must be signed by both parents and any nonparent who is granted custodial responsibility. If feasible, the agreement must:

- Identify the destination, 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 the 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 and that changing the terms of the obligation during deployment requires modification in the appropriate court;
- 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.

Nature of Authority Created by Custodial Responsibility Agreement (s. 61.723, F.S.)

An agreement granting custodial responsibility during deployment is temporary and terminates after the deploying parent returns, unless the agreement has been terminated before that time by court order or modification. 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 in writing by agreement of the deploying parent and the other parent or, if there is no written agreement to terminate the agreement, by court order.

Modification of Agreement (s. 61.725, F.S.)

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 (s. 61.727, F.S.)

A deploying parent, by power of attorney, may 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 of attorney by signing a revocation of the power of attorney.

Filing Custodial Responsibility Agreement or Power of Attorney with Court (s. 61.729, F.S.)

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.

Proceeding for Temporary Custody Order, Testimony (ss. 61.733 and 61.735, F.S.)

A court may 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 must conduct an expedited hearing. The bill allows for testimony of the deploying parent, servicemember, or witness by electronic means unless the court finds good cause to require in-person testimony.

Effect of Prior Judicial Order or Agreement (s. 61.737, F.S.)

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 (s. 61.739, F.S.)

A court may, upon the request of a deploying parent, if it is in the best interests of the child, 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.

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.

Grant of Limited Contact (s. 61.741, F.S.)

A 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.

Nature of Authority Created by Temporary Custody Order (s. 61.743, F.S.)

Any grant of authority to a nonparent is temporary and terminates after the deploying parent returns from deployment unless the grant has been terminated before then by a written agreement of the deploying parent and the other parent or, if there is no written agreement, by a court order. A nonparent granted caretaking authority, decisionmaking authority, or limited contact has standing to enforce the grant until it is terminated in writing by agreement of the deploying parent and the other parent, or if there is no written agreement, by court order or under the act. If the grant of authority is terminated by written agreement, a copy of the termination agreement must be filed with the court and the temporary custody order must be modified to reflect the termination. The deploying parent and the other parent may agree on alternative arrangements for custodial responsibility or seek an alternative arrangement that is consistent with the terms of the act.

Content of Temporary Custody Order (s. 61.745, F.S.)

An order granting custodial responsibility, when applicable, 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 (s. 61.747, F.S.)

The court may enter a temporary order for child support authorized by general law if the court has jurisdiction and has issued an order granting caretaking authority or an agreement granting caretaking authority has been issued.

Modifying or Terminating a Grant of Custodial Responsibility or Limited Contact to Nonparent (s. 61.749, F.S.)

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 unless the grant has been terminated before then by court order. The court must terminate a grant of limited contact on motion of a deploying parent.

Procedure for Terminating a Temporary Agreement Granting Custodial Responsibility (s. 61.761, F.S.)

The bill details the procedure for terminating a temporary agreement granting custodial responsibility. The procedure provides that, after a deploying parent returns from deployment, a deploying parent and the other parent may 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 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, 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 termination of a temporary order for custodial responsibility is governed by general law.

Visitation Before Termination of Temporary Grant of Custodial Responsibility (s. 61.763, F.S.)

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.

Applicability (61.773, F.S.)

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

The effective date of the bill is July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In 2002, the U.S. Supreme Court rendered a decision¹⁹ in a case that pitted the rights of a mother against the visitation rights of the children's grandparents. The Court emphasized its history of recognizing "the fundamental right of parents to make decisions concerning the care, custody, and control of their children." The Court further stated that the Due Process Clause prohibits a state from infringing on the fundamental right of a parent to make child rearing decisions. This legislation permits a deployed parent to delegate or assign his or her custodial rights to a non-parent. It could be argued that this assignment does not diminish the rights of the non-deployed parent because it is an assignment, not an expansion, of the deployed parent's existing rights.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁹ *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 61.703, 61.773, 61.705, 61.707, 61.709, 61.711, 61.713, 61.723, 61.725, 61.727, 61.729, 61.733, 61.735, 61.737, 61.739, 61.741, 61.743, 61.745, 61.747, 61.749, 61.761, 61.763, and 61.771.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on February 7, 2018:

The changes to the underlying bill which are contained in the committee substitute primarily address the termination of a grant of caretaking authority to a nonparent. Even though a nonparent has standing to enforce temporary child-custody-type rights until the agreement is terminated, the committee substitute permits the parents, by written agreement, to terminate the grant at any time, even earlier than the return of the deploying parent. This also permits the deploying parent to resume caretaking responsibilities sooner rather than waiting for a court order upon his or her return. The written termination agreement must be filed with the court.

If a temporary grant of authority does not specify a termination date, the grant will expire 30 days after a parent gives notice of a return, as opposed to 60 days under the bill.

The committee substitute also includes clarifying changes to the definitions of a “close and substantial relationship,” and “family member” and creates a definition of “notice of deployment.”

CS by Judiciary on January 25, 2018:

The committee substitute repeals s. 61.13002, F.S., the current statute pertaining to temporary time-sharing modification and child support modification due to military service. This section is discussed above in the Present Situation under Florida Law. Repealing this provision will avoid any conflict between the new act and existing law.

B. Amendments:

None.