WEST VIRGINIA CODE CHAPTER 48 ARTICLE 31

WV Legislature

§48-31-101. Short title.

This article may be cited as the Uniform Deployed Parents Custody and Visitation Act.

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§48-31-102. Definitions.

In this article:

(1) "Adult" means an individual who has attained 18 years of age or an emancipated minor.

(2) "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.

(3) "Child" means:

(A) An unemancipated individual who has not attained 18 years of age; or

(B) An adult son or daughter by birth or adoption, or under law of this state other than this article, who is the subject of a court order concerning custodial responsibility.

(4) "Close and substantial relationship" means a relationship in which a significant bond exists between a child and a nonparent.

(5) "Court" means a tribunal, authorized under law of this state other than this article to make, enforce, or modify a decision regarding custodial responsibility.

(6) "Custodial responsibility" has the same meaning as in §48-1-219 of this code.

(7) "Decision-making 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.

(8) "Deploying parent" means a service member, who is deployed or has been notified of impending deployment and is:

(A) A parent of a child under law of this state other than this article; or

(B) An individual who has custodial responsibility for a child under law of this state other than this article;

(9) "Deployment" means the movement or mobilization of a service member for more than ninety days but less than 18 months pursuant to uniformed service orders that:

(A) Are designated as unaccompanied;

(B) Do not authorize dependent travel; or

(C) Otherwise do not permit the movement of family members to the location to which the service member is deployed.

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(10) "Family member" means a sibling, aunt, uncle, cousin, step-parent or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state other than this article.

(11) "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 residence of the child.

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

(13) "Other parent" means an individual who, in common with a deploying parent, is:

(A) A parent of a child under law of this state other than this article; or

(B) An individual who has custodial responsibility for a child under law of this state other than this article.

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "Return from deployment" means the conclusion of a service member's deployment as specified in uniformed service orders.

(16) "Service member" means a member of a uniformed service.

(17) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound or process.

(18) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(19) "Uniformed service" means:

(A) Active and reserve components of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard of the United States;

(B) The United States Merchant Marine;

(C) The commissioned corps of the United States Public Health Service;

(D) The commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

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(E) The National Guard of a state.

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§48-31-103. Remedies for noncompliance.

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

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§48-31-104. Jurisdiction.

(a) A court may issue an order regarding custodial responsibility under this article only if the court has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

(b) If a court has issued a temporary order regarding custodial responsibility pursuant to this article, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act during the deployment.

(c) If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to the provisions of this article, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

(d) If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed because of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

(e) This section does not prevent a court from exercising temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

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§48-31-105. Notification required of deploying parent.

(a) Except as otherwise provided in subsection (c) or (d) of this section, a deploying parent shall notify in a record the other parent of a pending deployment not later than seven days after receiving notice of deployment unless reasonably prevented from doing so by the circumstances of service. If the circumstances of service prevent giving notification within the seven days, the deploying parent shall give the notification as soon as reasonably possible.

(b) Except as otherwise provided in subsection (c) or (d) of this section, each parent shall provide in a record the other parent with a plan for fulfilling that parent's share of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after notification of deployment is given under subsection (a) of this section.

(c) If a court order currently in effect prohibits disclosure of the address or contact information of the other parent, notification of deployment under subsection (a) of this section, or notification of a plan for custodial responsibility during deployment under subsection (b) of this section, may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

(d) Notification in a record under subsection (a) or (b) of this section is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.

(e) In a proceeding regarding custodial responsibility, a court may consider the reasonableness of a parent's efforts to comply with this section.

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§48-31-106. Duty to notify of change of address.

(a) Except as otherwise provided in subsection (b) of this section, an individual to whom custodial responsibility has been granted during deployment pursuant to the provisions of this article shall notify the deploying parent and any other individual with custodial responsibility of a child of any change of the individual's mailing address or residence until the grant is terminated. The individual shall provide the notice to any court that has issued a custody or child support order concerning the child which is in effect.

(b) If a court order currently in effect prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a notification under subsection (a) of this section may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.

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§48-31-107. General consideration in custody proceeding of parent's military service.

In a proceeding for custodial responsibility of a child of a service member, a court may not consider a parent's past deployment or possible future deployment in itself in determining the best interest of the child but may consider any significant impact on the best interest of the child of the parent's past or possible future deployment.

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§48-31-201. Form of agreement addressing custodial responsibility during deployment.

(a) The parents of a child may enter into a temporary agreement under this article granting custodial responsibility during deployment.

(b) An agreement under subsection (a) of this section shall be:

(1) In writing; and

(2) Signed by both parents and any nonparent to whom custodial responsibility is granted.

(c) Subject to subsection (d) of this section, an agreement under subsection (a), if feasible, shall:

(1) Identify the destination, duration, and conditions of the deployment that is the basis for the agreement;

(2) Specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent;

(3) Specify any decision-making authority that accompanies a grant of caretaking authority;

(4) Specify any grant of limited contact to a nonparent;

(5) If under the agreement custodial responsibility is shared by the other parent and a nonparent, or by other nonparents, provide a process to resolve any dispute that may arise;

(6) Specify the frequency, duration and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact, and the allocation of any costs of contact;

(7) Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;

(8) Acknowledge that any party's child-support obligation cannot be modified by the agreement, and that changing the terms of the obligation during deployment requires modification in the appropriate court;

(9) Provide that the agreement will terminate according to the procedures specified in this article after the deploying parent returns from deployment; and

(10) If the agreement must be filed pursuant to section two hundred five of this article, specify which parent is required to file the agreement.

(d) The omission of any of the items specified in subsection (c) of this section does not invalidate an agreement under this section.

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§48-31-202. Nature of authority created by agreement.

(a) An agreement under this article is temporary and terminates pursuant to the provisions of this article after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under section two hundred three of this article. The agreement does not create an independent, continuing right to caretaking authority, decision-making authority or limited contact in an individual to whom custodial responsibility is given.

(b) A nonparent who has caretaking authority, decision-making authority or limited contact by an agreement under this article has standing to enforce the agreement until it has been terminated by court order, by modification under section two hundred three of this article, or under other provisions of this article.

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§48-31-203. Modification of agreement.

(a) By mutual consent, the parents of a child may modify an agreement regarding custodial responsibility made pursuant to this article.

(b) If an agreement is modified under subsection (a) of this section before deployment of a deploying parent, the modification shall be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

(c) If an agreement is modified under subsection (a) of this section during deployment of a deploying parent, the modification shall be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

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§48-31-204. Power of attorney.

A deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state other than this article, 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.

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§48-31-205. Filing agreement or power of attorney with court.

An agreement or power of attorney under this article shall be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect concerning the child who is the subject of the agreement or power. The case number and heading of the pending case concerning custodial responsibility or child support shall be provided to the court with the agreement or power.

WV Legislature

§48-31-301. Proceeding for temporary custody order.

(a) After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue a temporary order granting custodial responsibility unless prohibited by the Service Members Civil Relief Act, 50 U.S.C. §3931 and §3932. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

(b) At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility of a child during deployment. The motion shall be filed in a pending proceeding for custodial responsibility in a court with jurisdiction under section one hundred four of this article or, if there is no pending proceeding in a court with jurisdiction under section one hundred four of this article, in a new action for granting custodial responsibility during deployment.

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§48-31-302. Expedited hearing.

If a motion to grant custodial responsibility is filed under subsection (b) of section three hundred one of this article before a deploying parent deploys, the court shall conduct an expedited hearing.

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§48-31-303. Testimony by electronic means.

In a proceeding under this article, a party or witness who is not reasonably available to appear personally may appear, provide testimony and present evidence by electronic means unless the court finds good cause to require a personal appearance.

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§48-31-304. Effect of prior judicial order or agreement.

In a proceeding for a grant of custodial responsibility pursuant to this article, the following rules apply:

(1) A prior judicial order, designating custodial responsibility if there is deployment, is binding on the court unless the circumstances meet the requirements of law of this state other than this article for modifying a judicial order regarding custodial responsibility.

(2) The court shall enforce a prior written agreement between the parents for designating custodial responsibility if there is deployment, including an agreement executed under section two hundred one of this article, unless the court finds that the agreement is contrary to the best interest of the child.

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§48-31-305. Grant of caretaking or decision-making authority to nonparent.

(a) On motion of a deploying parent and in accordance with law of this state other than this article, if it is in the best interest of the child, a court may 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.

(b) Unless a grant of caretaking authority to a nonparent under subsection (a) of this section is agreed to by the other parent, the grant is limited to an amount of time not greater than:

(1) The amount of time granted to the deploying parent under a permanent custody order, but the court may add unusual travel time necessary to transport the child; or

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

(c) A court may grant part of a deploying parent's decision-making authority, if the deploying parent is unable to exercise that 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 a court grants the authority to a nonparent, the court shall specify the decision-making powers granted, including decisions regarding the child's education, religious training, health care, extracurricular activities and travel.

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§48-31-306. Grant of limited contact.

On motion of a deploying parent, and in accordance with law of this state other than this article, unless the court finds that the contact would be contrary to the best interest of the child, a court shall 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.

WV Legislature

§48-31-307. Nature of authority created by temporary custody order.

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

(b) A nonparent granted caretaking authority, decision-making authority or limited contact under this article may enforce the grant until it is terminated by court order or under other provisions of this article.

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§48-31-308. Content of temporary custody order.

(a) An order granting custodial responsibility under this article shall:

(1) Designate the order as temporary; and

(2) Identify to the extent feasible the destination, duration and conditions of the deployment.

(b) If applicable, an order for custodial responsibility under this article shall:

(1) Specify the allocation of caretaking authority, decision-making authority or limited contact among the deploying parent, the other parent, and any nonparent;

(2) If the order divides caretaking or decision-making authority between individuals, or grants caretaking authority to one individual and limited contact to another, provide a process to resolve any dispute that may arise;

(3) Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications;

(4) Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless contrary to the best interest of the child;

(5) Provide for reasonable contact between the deploying parent and the child after 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; and

(6) Provide that the order will terminate pursuant to the provisions of this article after the deploying parent returns from deployment.

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§48-31-309. Order for child support.

If a court has issued an order granting caretaking authority under this article, or an agreement granting caretaking authority has been executed under section two hundred one of this article, the court may enter a temporary order for child support consistent with law of this state other than this article if the court has jurisdiction under the Uniform Interstate Family Support Act.

WV Legislature

§48-31-310. Modifying or terminating grant of custodial responsibility to nonparent.

(a) Except for an order under section three hundred four of this article, except as otherwise provided in subsection (b) of this section, and consistent with the Service Members Civil Relief Act, 50 U.S.C. §3931 and §3932, on motion of a deploying or other parent or any nonparent to whom caretaking authority, decision-making authority, or limited contact has been granted, the court may modify or terminate the grant if the modification or termination is consistent with this article and it is in the best interest of the child. A modification is temporary and terminates pursuant to the provisions of this article after the deploying parent returns from deployment, unless the grant has been terminated before that time by court order.

(b) On motion of a deploying parent, the court shall terminate a grant of limited contact.

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§48-31-401. Procedure for terminating temporary grant of custodial responsibility established by agreement.

(a) At any time after return from deployment, a temporary agreement granting custodial responsibility under section two hundred one of this article may be terminated by an agreement to terminate signed by the deploying parent and the other parent.

(b) A temporary agreement under section two hundred one of this article granting custodial responsibility terminates:

(1) If an agreement to terminate under subsection (a) of this section specifies a date for termination, on that date; or

(2) If the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by the deploying parent and the other parent.

(c) In the absence of an agreement under subsection (a) of this section to terminate, a temporary agreement granting custodial responsibility terminates under this article sixty days after the deploying parent gives notice to the other parent that the deploying parent returned from deployment.

(d) If a temporary agreement granting custodial responsibility was filed with a court pursuant to section two hundred five of this article, an agreement to terminate the temporary agreement also shall be filed with that court within a reasonable time after the signing of the agreement. The case number and heading of the case concerning custodial responsibility or child support shall be provided to the court with the agreement to terminate.

WV Legislature

§48-31-402. Consent procedure for terminating temporary grant of custodial responsibility established by court order.

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

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§48-31-403. Visitation before termination of temporary grant of custodial responsibility.

After a deploying parent returns from deployment until a temporary agreement or order for custodial responsibility established under this article is terminated, the court shall issue a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interest of the child, even if the time of contact exceeds the time the deploying parent spent with the child before deployment.

WV Legislature

§48-31-404. Termination by operation of law of temporary grant of custodial responsibility established by court order.

(a) If an agreement between the parties to terminate a temporary order for custodial responsibility under this article has not been filed, the order terminates sixty days after the deploying parent gives notice to the other parent and any nonparent granted custodial responsibility that the deploying parent has returned from deployment.

(b) A proceeding seeking to prevent termination of a temporary order for custodial responsibility is governed by law of this state other than this article: Provided, That no agreement of the parties made pursuant to the provisions of this article shall be the basis for a modification of the parents' permanent parenting plan made pursuant to section four hundred two, article nine of this chapter.

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§48-31-501. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

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§48-31-502. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. Section 7003(b).

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§48-31-503. Savings clause.

This article does not affect the validity of a temporary court order concerning custodial responsibility during deployment which was entered before the effective date of this article.

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