

2012 -- S 2521

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO DOMESTIC RELATIONS - UNIFORM CHILD CUSTODY JURISDICTION
AND ENFORCEMENT

Introduced By: Senator Roger Picard

Date Introduced: February 16, 2012

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 15-14.1 of the General Laws entitled "Uniform Child Custody
2 Jurisdiction and Enforcement Act" is hereby amended by adding thereto the following sections:

3 **15-14.1-43. Custody and visitation upon military temporary duty, deployment or**
4 **mobilization. -- (a) Purpose. – It is the purpose of this section to provide a means by which to**
5 **facilitate a fair, efficient, and swift process to resolve matters regarding custody and visitation**
6 **when a parent receives temporary duty, deployment, or mobilization orders from the military.**

7 **(b) Definitions. – As used in this chapter, the following words and phrases shall have the**
8 **following meanings unless the context shall indicate another or different meaning or intent:**

9 **(1) “Deployment” means the temporary transfer of a service member serving in an active-**
10 **duty status to another location in support of combat or some other military operation.**

11 **(2) “Mobilization” means the call-up of a National Guard or Reserve service member to**
12 **extended active duty status. For purposes of this definition, “mobilization” does not include**
13 **National Guard or Reserve annual training.**

14 **(3) “Temporary duty” means the transfer of a service member from one military base to a**
15 **different location, usually another base, for a limited period of time to accomplish training or to**
16 **assist in the performance of a noncombat mission.**

17 **(c) Custody. – When a parent who has custody, or has joint custody with primary**
18 **physical custody, receives temporary duty, deployment, or mobilization orders from the military**

1 that involve moving a substantial distance from the parent's residence or otherwise have a
2 material effect on the parent's ability to exercise custody responsibilities:

3 (1) Any temporary custody order for the child during the parent's absence shall end no
4 later than ten (10) days after the parent returns, but shall not impair the discretion of the court to
5 conduct a hearing for emergency custody upon return of the parent and within ten (10) days of the
6 filing of a verified motion for emergency custody alleging an immediate danger of irreparable
7 harm to the child; and

8 (2) Exclusion of military service from determination of the child's best interest. The
9 temporary duty, mobilization, or deployment and the temporary disruption to the child's schedule
10 shall not be a factor in a determination of change of circumstances if a motion is filed to transfer
11 custody from the service member.

12 (d) Visitation. – If the parent with visitation rights receives military temporary duty,
13 deployment, or mobilization orders that involve moving a substantial distance from the parent's
14 residence or otherwise have a material effect on the parent's ability to exercise visitation rights,
15 the court may delegate the parent's visitation rights, or a portion thereof, to a family member with
16 a close and substantial relationship to the minor child for the duration of the parent's absence, if
17 delegating visitation rights is in the child's best interest.

18 (e) Expedited Hearings. – Upon motion of a parent who has received military temporary
19 duty, deployment, or mobilization orders, the court shall, for good cause shown, hold an
20 expedited hearing in custody and visitation matters instituted under this section when the military
21 duties of the parent have a material effect on the parent's ability, or anticipated ability, to appear
22 in person at a regularly scheduled hearing.

23 (f) Electronic Communications. – Upon motion of a parent who has received military
24 temporary duty, deployment, or mobilization orders, the court shall, upon reasonable advance
25 notice and for good cause shown, allow the parent to present testimony and evidence by
26 electronic means in custody and visitation matters instituted under this section when the military
27 duties of the parent have a material effect on the parent's ability to appear in person at a regularly
28 scheduled hearing. The phrase "electronic means" includes communication by telephone, video
29 teleconference, or the Internet.

30 (g) Nothing in this section shall alter the duty of the court to consider "the best interest of
31 the child" in deciding custody or visitation matters.

32 **15-14.1-44. Final order, modification. --** (a) If a deploying parent is required to be
33 separated from a child, a court shall not enter a final order modifying parental rights and
34 responsibilities and parent-child contact in an existing order until ninety (90) days after the

1 deployment ends, unless such modification is agreed to by the deploying parent.

2 (b) Absence created by deployment or mobilization or the potential for future deployment
3 or mobilization shall not be the sole factor supporting a real, substantial, and unanticipated
4 change in circumstances pursuant to subsection 15-14.1-43(c)(2) of this title or grounds sufficient
5 to support a permanent modification of the parental rights and responsibilities or parent-child
6 contact established in an existing order.

7 **15-14.1-45. Temporary modification.** -- (a) Upon motion of a deploying or non-
8 deploying parent, the court shall enter a temporary order modifying parental rights and
9 responsibilities or parent-child contact during the period of deployment or mobilization when:

10 (1) A military parent who has shared, soled, or primary legal or physical parental rights
11 and responsibilities for a child or who has parent-child contact pursuant to an existing court order
12 has received notice from military leadership that he or she will deploy or mobilize in the near
13 future; and

14 (2) The deployment or mobilization would have a material effect upon his or her ability
15 to exercise such parental rights and responsibilities or parent-child contact.

16 (b) Motions for modification because of deployment shall be heard by the court as
17 expeditiously as possible, and shall be a priority for this purpose.

18 (c)(1) All temporary orders shall set a date certain for the end of deployment and the start
19 of the transition period. If deployment is extended, the temporary order shall remain in effect
20 during the extended deployment, and the transition schedule shall take effect at the end of the
21 extended deployment. In that case, the non-deployed parent shall notify the court in accordance
22 with this subdivision which notice shall not prejudice the deployed parent's right to return to the
23 prior order once the temporary order expires as provided in subdivision (2) of this section.

24 (2) The temporary order shall expire upon the completion of the transition, and the prior
25 order for parental rights and responsibilities and parent-child contact shall be in effect.

26 (d) Upon motion of the deploying parent, the court may delegate his or her parent-child
27 contact rights, or a portion of them, to a family member, a person with whom the deploying
28 parent cohabits, or another person with a close and substantial relationship to the minor child or
29 children for the duration of the deployment, upon a finding that it is in the child's best interest.
30 Such delegated contact does not create separate right to parent-child contact for a person other
31 than a parent once the temporary order is no longer in effect.

32 (e) A temporary modification order issued pursuant to this section shall designate the
33 deploying parent's parental rights and responsibilities for a parent-child contact with a child
34 during a period of leave granted to the deploying parent, in the best interest of the child.

1 (f) A temporary order issued under this section may require any of the following if the
2 court finds that it is in the best interest of the child:

3 (1) The non-deploying parent shall make the child reasonably available to the deploying
4 parent when the deploying parent has leave.

5 (2) The non-deploying parent shall facilitate opportunities for telephonic, electronic mail,
6 and other such contact between the deploying parent and the child during deployment.

7 (3) The deploying parent shall provide timely information regarding his or her leave
8 schedule to the non-deploying parent. Actual leave dates are subject to change with little notice
9 due to military necessity and shall not be used by the non-deploying parent to prevent parent-
10 child contact.

11 (g) A court order modifying a previous order for parental rights and responsibilities or
12 parent-child contact because of deployment shall specify that the deployment is basis for the
13 order, and it shall be entered by the court as a temporary order. The order shall further require the
14 non-deploying parent to provide the court and the deploying parent with thirty (30) days advance
15 written notice of any change of address and any change of telephone number.

16 **15-14.1-46. Emergency motion to modify permanent modification.** – (a) Upon the
17 return of the deploying parent, either parent may file a motion to modify the temporary order on
18 the grounds that compliance with the order will result in immediate danger of irreparable harm to
19 the child, and may request that the court issue an ex parte order. The deploying parent may file
20 such a motion prior to his or her return. The motion shall be accompanied by an affidavit in
21 support of the requested order. Upon a finding of irreparable harm based on the facts set forth in
22 the affidavit, the court may issue an ex parte order modifying parental rights and responsibilities
23 and parent-child contact. If the court issues an ex parte order, the court shall set the matter for
24 hearing within ten (10) days from the issuance of the order.

25 (b) Nothing in this chapter shall preclude the court from hearing a motion for permanent
26 modification of parental rights and responsibilities or parent-child contact prior to, or upon return
27 of the deploying parent. The moving party shall bear the burden of showing a real, substantial,
28 and unanticipated change in circumstances and that resumption of the parental rights and
29 responsibilities or parent-child order in effect before deployment is no longer in the child's best
30 interests. The absence created by deployment or mobilization and any resulting temporary
31 disruption to the child shall not be considered the sole factors in determining whether there has
32 been a real, substantial, and unanticipated change of circumstances in regard to the motion to
33 modify.

34 **15-14.1-47. Testimony and evidence.** -- Upon motion of a deploying parent, provided

1 reasonable advance notice is given and good cause shown, the court shall allow such parent to
2 present testimony and evidence by electronic means with respect to parental rights and
3 responsibilities or parent-child contact matters instituted under this section when the deployment
4 of that person has a material effect on his or her ability to appear in person at a regularly
5 scheduled hearing. The phrase “electronic means” includes communication by telephone or video
6 teleconference.

7 **15-14.1-48. No existing order.** -- If there is no existing order establishing the terms of
8 parental rights and responsibilities or parent-child contact and it appears that deployment or
9 mobilization is imminent, upon motion by either parent, the court shall expedite a hearing to
10 establish temporary parental rights and responsibilities and parent-child contact to ensure the
11 deploying parent has access to the child, to ensure disclosure of information, to grant other rights
12 and duties set forth herein, and to provide other appropriate relief. Any initial pleading filed to
13 establish parental rights and responsibilities for or parent-child contact with a child of a deploying
14 parent shall be so identified at the time of filing by stating in text of the pleading the specific facts
15 related to deployment.

16 **15-14.1-49. Duty to cooperate and disclose information.** -- (a) Because military
17 necessity may preclude court adjudication before deployment, the parties shall cooperate with
18 each other in an effort to reach a mutually agreeable resolution of parental rights and
19 responsibilities, parent-child contact, and child support. Each party shall provide information to
20 one another in an effort to facilitate agreement on these issues.

21 (b) Within fourteen (14) days of receiving notification of deployment or mobilization in
22 the near future from his or her military leadership, the military parent shall provide written notice
23 to the non-deploying parent of the same. If less than fourteen (14) days notice is received by the
24 military parent then notice must be given immediately upon receipt of notice to the non-deploying
25 parent.

26 **15-14.1-50. Failure to exercise parent-child contact rights.** -- In determining whether a
27 parent has failed to exercise parent-child contact, the court shall not count any time periods
28 during which the parent did not exercise such contact due to the material effect of the parent’s
29 military duties on the contact schedule.

30 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO DOMESTIC RELATIONS - UNIFORM CHILD CUSTODY JURISDICTION
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1 This act would facilitate and expedite a fair, efficient, and swift process to resolve matters
2 regarding custody and visitation when a parent receives temporary duty, deployment, or
3 mobilization orders from the military.

4 This act would take effect upon passage.

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