

## CHAPTER 2018-69

### Committee Substitute for Committee Substitute for House Bill No. 1217

An act relating to deployed parent custody and visitation; creating part IV of ch. 61, F.S., entitled “Uniform Deployed Parents Custody and Visitation Act”; providing definitions; providing remedies for noncompliance; authorizing a court to issue certain custodial orders only under certain jurisdiction; providing notice requirements; providing requirements for a proceeding for custodial responsibility of a child of a servicemember; providing requirements for agreement forms, termination, modification, power of attorney, and filing; providing requirements for temporary orders granting custodial responsibility; authorizing telephonic, electronic, and web-based appearance, testimony, and evidence in a proceeding for temporary custody; requiring certain witnesses to be sworn in by specified officers; providing for the effect of any prior judicial order or agreement; authorizing a court to grant temporary caretaking authority or limited contact to certain nonparents under certain conditions; providing for the termination of a grant of authority; providing requirements for a temporary custody order; authorizing a court to enter a temporary order for child support and modify or terminate a temporary grant of custodial responsibility under certain circumstances; providing procedures for terminating a temporary custodial responsibility agreement; providing for visitation before such termination; providing construction; providing applicability; repealing s. 61.13002, F.S., relating to temporary time-sharing modification and child support modification due to military service; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Part IV of chapter 61, Florida Statutes, consisting of sections 61.703-61.773, Florida Statutes, is created and entitled “Uniform Deployed Parents Custody and Visitation Act.”

61.703 Definitions.—As used in this part:

(1) “Adult” means an individual who has attained 18 years of age or who has had the disability of nonage removed under chapter 743.

(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, time-sharing, and visitation.

(3) “Child” means:

(a) An individual who has not attained 18 years of age and who has not had the disability of nonage removed under chapter 743; or

(b) An adult son or daughter by birth or adoption, or designated by general law, who is the subject of a court order concerning custodial responsibility.

(4) “Close and substantial relationship” means a positive relationship of substantial duration and depth in which a significant emotional bond exists between a child and a nonparent.

(5) “Court” means the court of legal jurisdiction.

(6) “Custodial responsibility” includes all powers and duties relating to caretaking authority and decisionmaking authority for a child. The term includes physical custody, legal custody, parental responsibility, parenting time, right to access, time-sharing, visitation, and authority to grant limited contact with a child.

(7) “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.

(8) “Deploying parent” means a servicemember who is deployed or has been notified of impending deployment and is:

(a) A parent of a child; or

(b) An individual who has custodial responsibility for a child.

(9) “Deployment” means the movement or mobilization of a servicemember for 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 servicemember is deployed.

(10) “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 familial relationship with a child.

(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 child’s residence.

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

(13) “Notice of deployment” means official notification to a servicemember, through orders or other written or electronic communication, that the servicemember is subject to deployment on or about a specified date.

(14) “Other parent” means an individual who, in addition to a deploying parent, is:

(a) A parent of a child; or

(b) An individual who has custodial responsibility for a child.

(15) “Record” means information that is created in a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.

(16) “Return from deployment” means the conclusion of a servicemember’s deployment as specified in uniformed service orders.

(17) “Servicemember” means a member of a uniformed service.

(18) “Sign” means, with the intent to authenticate or adopt a record, to:

(a) Execute or adopt a tangible symbol; or

(b) Attach to or logically associate with the record an electronic symbol, sound, or process.

(19) “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.

(20) “Uniformed service” means any of the following:

(a) Active and reserve components of the Army, Navy, Air Force, Marine Corps, 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.

(e) The National Guard of a state or territory of the United States, Puerto Rico, or the District of Columbia.

61.705 Remedies for noncompliance.—In addition to other remedies authorized by general law, if a court finds that a party to a proceeding acts in bad faith or intentionally fails to comply with this part or a court order issued under this part, the court may assess any remedies under this chapter against the party, and order other appropriate relief under general law.

61.707 Jurisdiction.—

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

(2) For purposes of the Uniform Child Custody Jurisdiction and Enforcement Act, the residence of the deploying parent does not change by reason of the deployment if:

(a) A court has issued a temporary order regarding custodial responsibility.

(b) A court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement.

(c) A court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment.

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

61.709 Notice requirement for deploying parent.—

(1) Except as otherwise provided in subsection (3), and subject to subsection (2), a deploying parent shall notify in a record to the other parent:

(a) A pending deployment not later than 7 days after receiving notice of deployment unless he or she is reasonably prevented from doing so by the circumstances of service, in which case the deploying parent shall provide notice as soon as reasonably possible.

(b) A proposed plan fulfilling each parent's share of custodial responsibility during deployment provided as soon as reasonably possible after notice of deployment is given under paragraph (a).

(2) If a court order prohibits disclosure of the address or contact information of the other parent, notice pursuant to subsection (1) must be provided to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notice to the other parent. The court shall keep confidential the address or contact information of the other parent.

(3) Notice pursuant to subsection (1) is not required if both parents are living in the same residence and have actual notice of the deployment or plan.

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

61.711 Duty to notify of change of address.—

(1) Except as otherwise provided in subsection (2), an individual granted custodial responsibility during deployment must notify the deploying parent and any other individual with custodial responsibility of a child of any change of mailing address or residence until the grant is terminated. The individual must provide the notice to any court that has issued a custody or child support order concerning the child.

(2) If a court order prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, notice pursuant to subsection (1) must be provided to the issuing court. The court shall keep confidential the mailing address or residence of the individual granted custodial responsibility.

61.713 General consideration in custody proceeding of parent's service. In a proceeding for custodial responsibility of a child of a servicemember, a court may not consider a parent's past deployment or possible future deployment in determining the best interest of the child.

61.721 Form of temporary custodial responsibility agreement.—

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

(2) The agreement must be in writing and signed by both parents and any agreed upon nonparent granted custodial responsibility during deployment.

(3) Subject to subsection (4), the agreement, if feasible, must:

(a) To the extent permissible, identify the destination, duration, and conditions of the deployment that is the basis for the agreement.

(b) Specify the allocation of caretaking authority among the deploying parent, the other parent, and any agreed upon nonparent.

(c) Specify any decisionmaking authority that accompanies a grant of caretaking authority.

(d) Specify any grant of limited contact to an agreed upon nonparent.

(e) Provide a process to resolve any dispute that may arise if custodial responsibility is shared by the other parent and an agreed upon nonparent, or by other agreed upon nonparents.

(f) 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 or agreed upon nonparent in facilitating the contact, and the allocation of any costs of contact.

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

(h) Acknowledge that 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.

(i) Provide that the agreement will terminate according to the procedures under this part after the deploying parent returns from deployment or as otherwise agreed upon in writing or in a record by the deploying parent and the other parent.

(j) Specify which parent is required to file the agreement if the agreement must be filed with the court pursuant to s. 61.729.

(4) The omission of any item in subsection (3) does not invalidate the agreement.

61.723 Nature of authority created by temporary custodial responsibility agreement.—

(1) An agreement granting custodial responsibility during deployment is temporary and terminates after the deploying parent returns from deployment unless the agreement has been terminated in a record or by a written agreement signed by both the deploying parent and the other parent, or, in the absence of such a record or agreement, by court order or under s. 61.761, or modified under s. 61.725. The agreement does not in any way create an independent, continuing right to caretaking authority, decisionmaking authority, or limited contact for an individual granted custodial responsibility.

(2) An agreed upon nonparent granted temporary custodial responsibility or limited contact by agreement has standing only to enforce the agreement until it is terminated in a record or by a written agreement signed by both the deploying parent and the other parent, or, in the absence of such a record or agreement, by court order or under s. 61.761, or modified under s. 61.725.

61.725 Modification of agreement.—

(1) The parents of a child may modify an agreement granting temporary custodial responsibility by mutual consent and without the consent of any nonparent.

(2) If an agreement is modified before deployment of a deploying parent, the modification must be in writing and signed by both parents and, if applicable, any agreed upon nonparent granted temporary custodial responsibility under the modified agreement.

(3) If an agreement is modified during deployment of a deploying parent, the modification must be agreed to in a record by both parents and, if

applicable, any agreed upon nonparent granted temporary custodial responsibility under the modified agreement.

61.727 Power of attorney.—A deploying parent may, by power of attorney, 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.

61.729 Filing custodial responsibility agreement or power of attorney with court.—An agreement or power of attorney must be filed within a reasonable time with a court that has entered an order in effect relating to custodial responsibility or child support 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 must be provided to the court with the agreement or power.

61.733 Proceeding for temporary custody order.—

(1) 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 Servicemembers Civil Relief Act, Title 50, Appendix U.S.C. ss. 501 et seq. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

(2)(a) 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 must be filed in a pending proceeding for custodial responsibility in a court with jurisdiction under s. 61.707 or, if a pending proceeding does not exist in a court with jurisdiction under s. 61.707, the motion must be filed in a new action for granting custodial responsibility during deployment.

(b) If a motion to grant custodial responsibility is filed under paragraph (a) before a deploying parent deploys, the court shall conduct an expedited hearing.

61.735 Testimony by electronic means.—In a proceeding for a temporary custody order, a deploying parent or servicemember witness who is not reasonably able to appear in person may appear, provide testimony, and present evidence by telephonic, electronic, or web-based means. The deploying parent or servicemember witness must be sworn in by an officer authorized to administer oaths under federal law.

61.737 Effect of prior judicial order or agreement.—In a proceeding for a temporary grant of custodial responsibility:

(1) A prior judicial order granting custodial responsibility in the event of deployment is binding on the court unless circumstances meet the

requirements authorized by general law for modifying a judicial order regarding custodial responsibility.

(2) The court shall enforce a prior written agreement between the parents for granting custodial responsibility in the event of deployment, including an agreement for custodial responsibility during deployment, unless the court finds that the agreement is not in the best interest of the child.

61.739 Grant of temporary caretaking authority to nonparent.—

(1) Upon the motion of a deploying parent and in accordance with general law, if it is in the best interest of the child, a court may grant temporary caretaking authority to a nonparent who is an adult family member of the child or an adult who is not a family member with whom the child has a close and substantial relationship. In the case of an adult who is not a family member with whom the child has a close and substantial relationship, the best interest of the child must be established by clear and convincing evidence.

(2) Unless a grant of caretaking authority to a nonparent is agreed to by the other parent, the grant is limited to an amount of time that may not exceed:

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

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

(3) If, due to the operational constraints of the deployment, or a portion thereof, the deploying parent is unable to exercise decisionmaking authority and if it is in the best interest of the child, a court may grant part of that authority to a nonparent who is an adult family member of the child or an adult who is not a family member with whom the child has a close and substantial relationship. In the case of an adult who is not a family member with whom the child has a close and substantial relationship, the best interest of the child must be established by clear and convincing evidence. A grant of decisionmaking authority to a nonparent must be narrowly drawn to the reasonably foreseeable needs of the child during the time that the deploying parent is unable to exercise such authority and must consider the role of the other parent. If a court grants the authority to a nonparent, the court shall specify the decisionmaking powers granted and the duration of such grant, which shall not exceed the length of time in which the deploying parent is unable to exercise decisionmaking authority. Except as otherwise specified in this subsection, the deploying parent retains his or her decisionmaking authority for the child during deployment.



61.741 Grant of limited contact.—A court shall grant limited contact to a nonparent who is a family member of the child or an individual who is not a family member with whom the child has a close and substantial relationship on motion of a deploying parent and in accordance with general law unless the court finds that limited contact with a nonparent would not be in the best interest of the child. In the case of an adult who is not a family member with whom the child has a close and substantial relationship, the best interest of the child must be established by clear and convincing evidence.

61.743 Nature of authority created by temporary custody order.—

(1) A grant of authority is temporary and terminates after the deploying parent returns from deployment unless the grant has been terminated before the return of the deploying parent in a record or by a written agreement signed by both the deploying parent and the other parent, or, in the absence of such a record or agreement, by court order. The grant does not create any independent, continuing right to caretaking authority, decision-making authority, or limited contact to an individual granted temporary custody.

(2) A nonparent granted temporary caretaking authority, decisionmaking authority, or limited contact has standing only to enforce the grant until it is terminated in a record or by a written agreement signed by both the deploying parent and the other parent, or, in the absence of such a record or agreement, by court order or under this part.

(3) If a grant of temporary authority is terminated in a record or by a written agreement signed by both the deploying parent and the other parent, a copy of the termination record or agreement shall be filed with the court and the temporary custody order shall be modified to reflect the termination. Thereafter, the deploying parent and the other parent may agree on alternative arrangements for custodial responsibility in compliance with s. 61.721 or either parent may seek an alternative arrangement for custodial responsibility under s. 61.749.

61.745 Content of temporary custody order.—An order granting custodial responsibility, when applicable, must:

(1) Designate the order as temporary and provide for termination after the deploying parent returns from deployment.

(2) To the extent permissible, identify the destination, duration, and conditions of the deployment.

(3) Specify the allocation of caretaking authority, decisionmaking authority, or limited contact among the deploying parent, the other parent, and any nonparent.

(4) Provide a process to resolve any dispute that may arise if the order divides caretaking or decisionmaking authority between individuals, or

grants caretaking authority to one individual and limited contact to another individual.

(5) 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.

(6) 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.

(7) 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.

61.747 Order for child support.—If a court has issued an order granting caretaking authority, or an agreement granting caretaking authority has been executed, the court may enter a temporary order for child support authorized by general law if the court has jurisdiction under the Uniform Interstate Family Support Act. If a temporary order for child support is entered under this section, the court may:

(1) Enter a temporary order for child support from the deploying parent to the other parent pursuant to s. 61.30;

(2) Require the deploying parent to enroll the child as a military dependent with DEERS, TriCare, or other similar benefits available to military dependents as provided by the deploying parent's branch of service; or

(3) Suspend, abate, or reduce the child support obligation of the other parent until the custody judgment or time-share order previously in effect is reinstated.

61.749 Modifying or terminating temporary grant of custodial responsibility or limited contact to nonparent.—

(1) Except for an agreement under s. 61.723, or as otherwise provided in subsection (2), and consistent with the Servicemembers Civil Relief Act, Title 50, Appendix U.S.C. ss. 501 et seq, a court may modify or terminate a temporary grant of custodial responsibility on motion of a deploying parent, other parent, or any nonparent granted caretaking authority if the modification or termination is consistent with this part and 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 that time by court order.

(2) The court shall terminate a grant of limited contact on motion of a deploying parent.

61.761 Procedure for terminating temporary agreement granting custodial responsibility.—

(1) After a deploying parent returns from deployment, a deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility.

(2) After an agreement has been filed, it shall terminate:

(a) On the date specified on an agreement to terminate under subsection (1); or

(b) 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.

(3) In the absence of an agreement to terminate under subsection (1), a temporary agreement granting custodial responsibility automatically terminates 30 days after the deploying parent gives notice of return from deployment to the other parent.

(4) If a temporary agreement granting custodial responsibility was filed with a court pursuant to s. 61.729, an agreement to terminate must be filed with the court within a reasonable time after the deploying parent and other parent sign the agreement. The case number and heading of the case concerning custodial responsibility or child support must be provided to the court with the agreement to terminate.

(5) A proceeding seeking to prevent termination of a temporary order for custodial responsibility is governed by general law.

61.763 Visitation before termination of temporary grant of custodial responsibility.—From the time a deploying parent returns from deployment until a temporary agreement or order for custodial responsibility is terminated, the court shall issue a temporary order granting the deploying parent reasonable contact with the child even if the time of contact exceeds the time the deploying parent spent with the child before deployment unless it is not in the best interest of the child.

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

61.773 Applicability.—This act does not:

(1) Affect the validity of a temporary agreement or court order concerning custodial responsibility during deployment entered before July 1, 2018.

(2) Apply to a permanent change of station move by a servicemember, which shall be governed by s. 61.13001.

Section 2. Section 61.13002, Florida Statutes, is repealed.

Section 3. This act shall take effect July 1, 2018.

Approved by the Governor March 21, 2018.

Filed in Office Secretary of State March 21, 2018.