

Effective 7/1/2016

Part 3

Judicial Procedure for Granting Custodial Responsibility During Deployment

Effective 7/1/2017

78B-20-301 Definition.

In this part, "close and substantial relationship" means a relationship in which a significant bond exists between a child and a nonparent.

Enacted by Chapter 292, 2016 General Session

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78B-20-302 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 Section 39-7-105 and the Servicemembers Civil Relief Act, 50 U.S.C. Appendix Sections 521 and 522. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.
- (2) 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 78B-20-104 or, if there is no pending proceeding in a court with jurisdiction under Section 78B-20-104, in a new action for granting custodial responsibility during deployment.

Enacted by Chapter 292, 2016 General Session

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78B-20-303 Expedited hearing.

If a motion to grant custodial responsibility is filed under Subsection 78B-20-302(2) before a deploying parent deploys, the court shall conduct an expedited hearing.

Enacted by Chapter 292, 2016 General Session

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78B-20-304 Testimony by electronic means.

In a proceeding under this part, 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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78B-20-305 Effect of prior judicial order or agreement.

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

- (1) a prior judicial order designating custodial responsibility in the event of deployment is binding on the court unless the circumstances meet the requirements of the law of this state other than this chapter for modifying a judicial order regarding custodial responsibility; and
- (2) the court shall enforce a prior written agreement between the parents for designating custodial responsibility in the event of deployment, including an agreement executed under Part 2, Agreement Addressing Custodial Responsibility During Deployment, unless the court finds that the agreement is contrary to the best interest of the child.

Enacted by Chapter 292, 2016 General Session

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78B-20-306 Grant of caretaking or decision-making authority to nonparent.

- (1) On motion of a deploying parent and in accordance with the law of this state other than this chapter, 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 with whom the child has a close and substantial relationship.
- (2) Unless a grant of caretaking authority to a nonparent under Subsection (1) is agreed to by the other parent, the grant is limited to an amount of time not greater than:
 - (a) 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
 - (b) 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.
- (3) 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 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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78B-20-307 Grant of limited contact.

On motion of a deploying parent, and in accordance with the law of this state other than this chapter, 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.

Enacted by Chapter 292, 2016 General Session

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78B-20-308 Nature of authority created by temporary custody order.

- (1) A grant of authority under this part is temporary and terminates under Part 4, Return from Deployment, after the return from deployment of the deploying parent, unless the grant has been terminated before that time by court order. The grant may not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom it is granted.

- (2) A nonparent granted caretaking authority, decision-making authority, or limited contact under this part has standing to enforce the grant until it is terminated by court order or under Part 4, Return from Deployment.

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78B-20-309 Content of temporary custody order.

- (1) An order granting custodial responsibility under this part shall:
 - (a) designate the order as temporary; and
 - (b) identify to the extent feasible the destination, duration, and conditions of the deployment.
- (2) If applicable, an order for custodial responsibility under this part shall:
 - (a) specify the allocation of caretaking authority, decision-making authority, or limited contact among the deploying parent, the other parent, and any nonparent;
 - (b) 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;
 - (c) 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;
 - (d) 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;
 - (e) 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
 - (f) provide that the order will terminate pursuant to Part 4, Return from Deployment, after the deploying parent returns from deployment.

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78B-20-310 Order for child support.

If a court has issued an order granting caretaking authority under this part, or an agreement granting caretaking authority has been executed under Part 2, Agreement Addressing Custodial Responsibility During Deployment, the court may enter a temporary order for child support consistent with the law of this state other than this chapter if the court has jurisdiction under Title 78B, Chapter 14, Utah Uniform Interstate Family Support Act.

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78B-20-311 Modifying or terminating grant of custodial responsibility to nonparent.

- (1) Except for an order under Section 78B-20-305, except as otherwise provided in Subsection (2), and consistent with Section 39-7-105 and the Servicemembers Civil Relief Act, 50 U.S.C. Appendix Sections 521 and 522, on motion of a deploying parent, 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 part and it is in the best interest of the child. A modification is temporary and terminates pursuant to Part 4, Return from Deployment, after the deploying parent returns from deployment, unless the grant has been terminated before that time by court order.

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

Enacted by Chapter 292, 2016 General Session