

SERVICEMEMBERS CUSTODY AND VISITATION

AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill modifies provisions related to custody, visitation, and servicemembers.

Highlighted Provisions:

This bill:

- ▶ addresses custody of children in case of separation or divorce;
- ▶ amends definition provisions;
- ▶ provides the modification or termination of a custody order;
- ▶ amends advisory guidelines;
- ▶ addresses parenting plans;
- ▶ addresses temporary agreements granting custodial responsibility during deployment;
- ▶ amends requirement to file agreement or power of attorney;
- ▶ modifies provisions related to terminating a temporary grant of custodial responsibility; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.



28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **30-3-10**, as last amended by Laws of Utah 2014, Chapter 409
- 31 **30-3-10.1**, as last amended by Laws of Utah 2003, Chapter 269
- 32 **30-3-10.4**, as last amended by Laws of Utah 2012, Chapter 271
- 33 **30-3-10.8**, as enacted by Laws of Utah 2001, Chapter 126
- 34 **30-3-10.9**, as last amended by Laws of Utah 2003, Chapter 288
- 35 **30-3-33**, as last amended by Laws of Utah 2011, Chapter 297
- 36 **78B-20-102 (Effective 07/01/17)**, as enacted by Laws of Utah 2016, Chapter 292
- 37 **78B-20-201 (Effective 07/01/17)**, as enacted by Laws of Utah 2016, Chapter 292
- 38 **78B-20-205 (Effective 07/01/17)**, as enacted by Laws of Utah 2016, Chapter 292
- 39 **78B-20-401 (Effective 07/01/17)**, as enacted by Laws of Utah 2016, Chapter 292
- 40 **78B-20-403 (Effective 07/01/17)**, as enacted by Laws of Utah 2016, Chapter 292
- 41 **78B-20-404 (Effective 07/01/17)**, as enacted by Laws of Utah 2016, Chapter 292

42

43 *Be it enacted by the Legislature of the state of Utah:*

44 Section 1. Section **30-3-10** is amended to read:

45 **30-3-10. Custody of children in case of separation or divorce -- Custody**
46 **consideration.**

47 (1) If a [~~husband and wife~~] married couple having one or more minor children are
48 separated, or their marriage is declared void or dissolved, the court shall make an order for the
49 future care and custody of the minor children as it considers appropriate.

50 (a) In determining any form of custody, including a change in custody, the court shall
51 consider the best interests of the child without preference for either [~~the mother or father~~]
52 parent solely because of the biological sex of the parent and, among other factors the court
53 finds relevant, the following:

- 54 (i) the past conduct and demonstrated moral standards of each of the parties;
- 55 (ii) which parent is most likely to act in the best interest of the child, including
56 allowing the child frequent and continuing contact with the noncustodial parent;
- 57 (iii) the extent of bonding between the parent and child, meaning the depth, quality,
58 and nature of the relationship between a parent and child;

59 (iv) whether the parent has intentionally exposed the child to pornography or material
60 harmful to a minor, as defined in Section 76-10-1201; and

61 (v) those factors outlined in Section 30-3-10.2.

62 (b) There shall be a rebuttable presumption that joint legal custody, as defined in
63 Section 30-3-10.1, is in the best interest of the child, except in cases where there is:

64 (i) domestic violence in the home or in the presence of the child;

65 (ii) special physical or mental needs of a parent or child, making joint legal custody
66 unreasonable;

67 (iii) physical distance between the residences of the parents, making joint decision
68 making impractical in certain circumstances; or

69 (iv) any other factor the court considers relevant including those listed in this section
70 and Section 30-3-10.2.

71 (c) The person who desires joint legal custody shall file a proposed parenting plan in
72 accordance with Sections 30-3-10.8 and 30-3-10.9. A presumption for joint legal custody may
73 be rebutted by a showing by a preponderance of the evidence that it is not in the best interest of
74 the child.

75 (d) The children may not be required by either party to testify unless the trier of fact
76 determines that extenuating circumstances exist that would necessitate the testimony of the
77 children be heard and there is no other reasonable method to present their testimony.

78 (e) The court may inquire of the children and take into consideration the children's
79 desires regarding future custody or parent-time schedules, but the expressed desires are not
80 controlling and the court may determine the children's custody or parent-time otherwise. The
81 desires of a child 14 years of age or older shall be given added weight, but is not the single
82 controlling factor.

83 (f) If interviews with the children are conducted by the court pursuant to Subsection
84 (1)(e), they shall be conducted by the judge in camera. The prior consent of the parties may be
85 obtained but is not necessary if the court finds that an interview with the children is the only
86 method to ascertain the child's desires regarding custody.

87 (2) In awarding custody, the court shall consider, among other factors the court finds
88 relevant, which parent is most likely to act in the best interests of the child, including allowing
89 the child frequent and continuing contact with the noncustodial parent as the court finds

90 appropriate.

91 (3) If the court finds that one parent does not desire custody of the child, the court shall
92 take that evidence into consideration in determining whether to award custody to the other
93 parent.

94 (4) (a) Except as provided in Subsection (4)(b), a court may not discriminate against a
95 parent due to a disability, as defined in Section [57-21-2](#), in awarding custody or determining
96 whether a substantial change has occurred for the purpose of modifying an award of custody.

97 (b) If a court takes a parent's disability into account in awarding custody or determining
98 whether a substantial change has occurred for the purpose of modifying an award of custody,
99 the parent with a disability may rebut any evidence, presumption, or inference arising from the
100 disability by showing that:

101 (i) the disability does not significantly or substantially inhibit the parent's ability to
102 provide for the physical and emotional needs of the child at issue; or

103 (ii) the parent with a disability has sufficient human, monetary, or other resources
104 available to supplement the parent's ability to provide for the physical and emotional needs of
105 the child at issue.

106 (c) Nothing in this section may be construed to apply to adoption proceedings under
107 Title 78B, Chapter 6, Part 1, Utah Adoption Act.

108 (5) This section establishes neither a preference nor a presumption for or against joint
109 physical custody or sole physical custody, but allows the court and the family the widest
110 discretion to choose a parenting plan that is in the best interest of the child.

111 (6) When an issue before the court involves custodial responsibility in the event of a
112 deployment of one or both parents who are servicemembers, and the servicemember has not yet
113 been notified of deployment, the court shall resolve the issue based on the standards in Sections
114 [78B-20-306](#) through [78B-20-309](#).

115 Section 2. Section **30-3-10.1** is amended to read:

116 **30-3-10.1. Definitions -- Joint legal custody -- Joint physical custody.**

117 As used in this chapter:

118 (1) (a) "Custodial responsibility" includes all powers and duties relating to caretaking
119 authority and decision-making authority for a child.

120 (b) "Custodial responsibility" includes physical custody, legal custody, parenting time,

121 right to access, visitation, and authority to grant limited contact with a child.

122 [~~(1)~~] (2) "Joint legal custody":

123 (a) means the sharing of the rights, privileges, duties, and powers of a parent by both
124 parents, where specified;

125 (b) may include an award of exclusive authority by the court to one parent to make
126 specific decisions;

127 (c) does not affect the physical custody of the child except as specified in the order of
128 joint legal custody;

129 (d) is not based on awarding equal or nearly equal periods of physical custody of and
130 access to the child to each of the parents, as the best interest of the child often requires that a
131 primary physical residence for the child be designated; and

132 (e) does not prohibit the court from specifying one parent as the primary caretaker and
133 one home as the primary residence of the child.

134 [~~(2)~~] (3) "Joint physical custody":

135 (a) means the child stays with each parent overnight for more than 30% of the year, and
136 both parents contribute to the expenses of the child in addition to paying child support;

137 (b) can mean equal or nearly equal periods of physical custody of and access to the
138 child by each of the parents, as required to meet the best interest of the child;

139 (c) may require that a primary physical residence for the child be designated; and

140 (d) does not prohibit the court from specifying one parent as the primary caretaker and
141 one home as the primary residence of the child.

142 (4) "Servicemember" means a member of a uniformed service.

143 (5) "Uniformed service" means:

144 (a) active and reserve components of the United States Armed Forces;

145 (b) the United States Merchant Marine;

146 (c) the commissioned corps of the United States Public Health Service;

147 (d) the commissioned corps of the National Oceanic and Atmospheric Administration
148 of the United States; or

149 (e) the national guard of a state.

150 Section 3. Section 30-3-10.4 is amended to read:

151 **30-3-10.4. Modification or termination of order.**

152 (1) On the petition of one or both of the parents, or the joint legal or physical
153 custodians if they are not the parents, the court may, after a hearing, modify or terminate an
154 order that established joint legal or physical custody if:

155 (a) the verified petition or accompanying affidavit initially alleges that admissible
156 evidence will show that the circumstances of the child or one or both parents or joint legal or
157 physical custodians have materially and substantially changed since the entry of the order to be
158 modified;

159 (b) a modification of the terms and conditions of the order would be an improvement
160 for and in the best interest of the child; and

161 (c) (i) both parents have complied in good faith with the dispute resolution procedure
162 in accordance with Subsection 30-3-10.3(7); or

163 (ii) if no dispute resolution procedure is contained in the order that established joint
164 legal or physical custody, the court orders the parents to participate in a dispute resolution
165 procedure in accordance with Subsection 30-3-10.2(5) unless the parents certify that, in good
166 faith, they have ~~utilized~~ used a dispute resolution procedure to resolve their dispute.

167 (2) (a) In determining whether the best interest of a child will be served by either
168 modifying or terminating the joint legal or physical custody order, the court shall, in addition to
169 other factors the court considers relevant, consider the factors outlined in Section 30-3-10 and
170 Subsection 30-3-10.2(2).

171 (b) A court order modifying or terminating an existing joint legal or physical custody
172 order shall contain written findings that:

173 (i) a material and substantial change of circumstance has occurred; and

174 (ii) a modification of the terms and conditions of the order would be an improvement
175 for and in the best interest of the child.

176 (c) The court shall give substantial weight to the existing joint legal or physical custody
177 order when the child is thriving, happy, and well-adjusted.

178 (3) The court shall, in every case regarding a petition for termination of a joint legal or
179 physical custody order, consider reasonable alternatives to preserve the existing order in
180 accordance with Subsection 30-3-10(1)(b). The court may modify the terms and conditions of
181 the existing order in accordance with Subsection 30-3-10(5) and may order the parents to file a
182 parenting plan in accordance with this chapter.

183 (4) A parent requesting a modification from sole custody to joint legal custody or joint
184 physical custody or both, or any other type of shared parenting arrangement, shall file and serve
185 a proposed parenting plan with the petition to modify in accordance with Section [30-3-10.8](#).

186 (5) If the court finds that an action under this section is filed or answered frivolously
187 and in a manner designed to harass the other party, the court shall assess attorney fees as costs
188 against the offending party.

189 (6) When an issue before the court involves custodial responsibility in the event of
190 deployment of one or both parents who are servicemembers, and the servicemember has not yet
191 been notified of deployment, the court shall resolve the issue based on the standards in Sections
192 [78B-20-306](#) through [78B-20-309](#).

193 Section 4. Section **30-3-10.8** is amended to read:

194 **30-3-10.8. Parenting plan -- Filing -- Modifications.**

195 (1) In any proceeding under this chapter, including actions for paternity, [~~any~~] a party
196 requesting joint custody, joint legal or physical custody, or any other type of shared parenting
197 arrangement, shall file and serve a proposed parenting plan at the time of the filing of their
198 original petition or at the time of filing their answer or counterclaim.

199 (2) In proceedings for a modification of custody provisions or modification of a
200 parenting plan, a proposed parenting plan shall be filed and served with the petition to modify,
201 or the answer or counterclaim to the petition to modify.

202 (3) A party who files a proposed parenting plan in compliance with this section may
203 move the court for an order of default to adopt the plan if the other party fails to file a proposed
204 parenting plan as required by this section.

205 (4) Either party may file and serve an amended proposed parenting plan according to
206 the rules for amending pleadings.

207 (5) The parent submitting a proposed parenting plan shall attach a verified statement
208 that the plan is proposed by that parent in good faith.

209 (6) Both parents may submit a parenting plan which has been agreed upon. A verified
210 statement, signed by both parents, shall be attached.

211 (7) If the parents file inconsistent parenting plans, the court may appoint a guardian ad
212 litem to represent the best interests of the child, who may, if necessary, file a separate parenting
213 plan reflecting the best interests of the child.

214 (8) When one or both parents are a servicemember, the parenting plan shall be
215 consistent with Subsection 30-3-10.9(10). If after a parenting plan is adopted, one or both
216 parents become servicemembers, as soon as practical, the parents shall amend the existing
217 parenting plan to comply with Subsection 30-3-10.9(10).

218 Section 5. Section 30-3-10.9 is amended to read:

219 **30-3-10.9. Parenting plan -- Objectives -- Required provisions -- Dispute**
220 **resolution.**

221 (1) The objectives of a parenting plan are to:

222 (a) provide for the child's physical care;

223 (b) maintain the child's emotional stability;

224 (c) provide for the child's changing needs as the child grows and matures in a way that
225 minimizes the need for future modifications to the parenting plan;

226 (d) set forth the authority and responsibilities of each parent with respect to the child
227 consistent with the definitions outlined in this chapter;

228 (e) minimize the child's exposure to harmful parental conflict;

229 (f) encourage the parents, where appropriate, to meet the responsibilities to their minor
230 children through agreements in the parenting plan rather than relying on judicial intervention;
231 and

232 (g) protect the best interests of the child.

233 (2) The parenting plan shall contain provisions for resolution of future disputes
234 between the parents, allocation of decision-making authority, and residential provisions for the
235 child, and provisions addressing notice and parent-time responsibilities in the event of the
236 relocation of either party. It may contain other provisions comparable to those in Sections
237 30-3-5 and 30-3-10.3 regarding the welfare of the child.

238 (3) A process for resolving disputes shall be provided unless precluded or limited by
239 statute. A dispute resolution process may include:

240 (a) counseling;

241 (b) mediation or arbitration by a specified individual or agency; or

242 (c) court action.

243 (4) In the dispute resolution process:

244 (a) preference shall be given to the provisions in the parenting plan;

245 (b) parents shall use the designated process to resolve disputes relating to
246 implementation of the plan, except those related to financial support, unless an emergency
247 exists;

248 (c) a written record shall be prepared of any agreement reached in counseling or
249 mediation and provided to each party;

250 (d) if arbitration becomes necessary, a written record shall be prepared and a copy of
251 the arbitration award shall be provided to each party;

252 (e) if the court finds that a parent has used or frustrated the dispute resolution process
253 without good reason, the court may award attorney's fees and financial sanctions to the
254 prevailing parent;

255 (f) the district court shall have the right of review from the dispute resolution process;
256 and

257 (g) the provisions of this Subsection (4) shall be set forth in any final decree or order.

258 (5) The parenting plan shall allocate decision-making authority to one or both parties
259 regarding the children's education, health care, and religious upbringing. The parties may
260 incorporate an agreement related to the care and growth of the children in these specified areas
261 or in other areas into their plan, consistent with the criteria outlined in Subsection 30-3-10.7(2)
262 and Subsection (1). Regardless of the allocation of decision-making in the parenting plan,
263 either parent may make emergency decisions affecting the health or safety of the child.

264 (6) Each parent may make decisions regarding the day-to-day care and control of the
265 child while the child is residing with that parent.

266 (7) When mutual decision-making is designated but cannot be achieved, the parties
267 shall make a good faith effort to resolve the issue through the dispute resolution process.

268 (8) The plan shall include a residential schedule which designates in which parent's
269 home each minor child shall reside on given days of the year, including provisions for holidays,
270 birthdays of family members, vacations, and other special occasions.

271 (9) If a parent fails to comply with a provision of the parenting plan or a child support
272 order, the other parent's obligations under the parenting plan or the child support order are not
273 affected. Failure to comply with a provision of the parenting plan or a child support order may
274 result in a finding of contempt of court.

275 (10) (a) When one or both parents are servicemembers, the parenting plan shall contain

276 provisions that address the foreseeable parenting and custodial issues likely to arise in the event
277 of notification of deployment or other contingency, including long-term deployments,
278 short-term deployments, death, incapacity, and noncombatant evacuation operations.

279 (b) The provisions in the parenting plan described in Subsection (10)(a) shall comport
280 substantially with the requirements of an agreement made pursuant to Section [78B-20-201](#).

281 Section 6. Section **30-3-33** is amended to read:

282 **30-3-33. Advisory guidelines.**

283 In addition to the parent-time schedules provided in Sections [30-3-35](#) and [30-3-35.5](#),
284 the following advisory guidelines are suggested to govern all parent-time arrangements
285 between parents.

286 (1) Parent-time schedules mutually agreed upon by both parents are preferable to a
287 court-imposed solution.

288 (2) The parent-time schedule shall be ~~[utilized]~~ used to maximize the continuity and
289 stability of the child's life.

290 (3) Special consideration shall be given by each parent to make the child available to
291 attend family functions including funerals, weddings, family reunions, religious holidays,
292 important ceremonies, and other significant events in the life of the child or in the life of either
293 parent which may inadvertently conflict with the parent-time schedule.

294 (4) The responsibility for the pick up, delivery, and return of the child shall be
295 determined by the court when the parent-time order is entered, and may be changed at any time
296 a subsequent modification is made to the parent-time order.

297 (5) If the noncustodial parent will be providing transportation, the custodial parent
298 shall have the child ready for parent-time at the time the child is to be picked up and shall be
299 present at the custodial home or shall make reasonable alternate arrangements to receive the
300 child at the time the child is returned.

301 (6) If the custodial parent will be transporting the child, the noncustodial parent shall
302 be at the appointed place at the time the noncustodial parent is to receive the child, and have
303 the child ready to be picked up at the appointed time and place, or have made reasonable
304 alternate arrangements for the custodial parent to pick up the child.

305 (7) Regular school hours may not be interrupted for a school-age child for the exercise
306 of parent-time by either parent.

307 (8) The court may make alterations in the parent-time schedule to reasonably
308 accommodate the work schedule of both parents and may increase the parent-time allowed to
309 the noncustodial parent but may not diminish the standardized parent-time provided in Sections
310 30-3-35 and 30-3-35.5.

311 (9) The court may make alterations in the parent-time schedule to reasonably
312 accommodate the distance between the parties and the expense of exercising parent-time.

313 (10) Neither parent-time nor child support is to be withheld due to either parent's
314 failure to comply with a court-ordered parent-time schedule.

315 (11) The custodial parent shall notify the noncustodial parent within 24 hours of
316 receiving notice of all significant school, social, sports, and community functions in which the
317 child is participating or being honored, and the noncustodial parent shall be entitled to attend
318 and participate fully.

319 (12) The noncustodial parent shall have access directly to all school reports including
320 preschool and daycare reports and medical records and shall be notified immediately by the
321 custodial parent in the event of a medical emergency.

322 (13) Each parent shall provide the other with the parent's current address and telephone
323 number, email address, and other virtual parent-time access information within 24 hours of any
324 change.

325 (14) Each parent shall permit and encourage, during reasonable hours, reasonable and
326 uncensored communications with the child, in the form of mail privileges and virtual
327 parent-time if the equipment is reasonably available, provided that if the parties cannot agree
328 on whether the equipment is reasonably available, the court shall decide whether the equipment
329 for virtual parent-time is reasonably available, taking into consideration:

330 (a) the best interests of the child;

331 (b) each parent's ability to handle any additional expenses for virtual parent-time; and

332 (c) any other factors the court considers material.

333 (15) Parental care shall be presumed to be better care for the child than surrogate care
334 and the court shall encourage the parties to cooperate in allowing the noncustodial parent, if
335 willing and able to transport the children, to provide the child care. Child care arrangements
336 existing during the marriage are preferred as are child care arrangements with nominal or no
337 charge.

338 (16) Each parent shall provide all surrogate care providers with the name, current
339 address, and telephone number of the other parent and shall provide the noncustodial parent
340 with the name, current address, and telephone number of all surrogate care providers unless the
341 court for good cause orders otherwise.

342 (17) Each parent shall be entitled to an equal division of major religious holidays
343 celebrated by the parents, and the parent who celebrates a religious holiday that the other parent
344 does not celebrate shall have the right to be together with the child on the religious holiday.

345 (18) If the child is on a different parent-time schedule than a sibling, based on Sections
346 [30-3-35](#) and [30-3-35.5](#), the parents should consider if an upward deviation for parent-time with
347 all the minor children so that parent-time is uniform between school aged and nonschool aged
348 children, is appropriate.

349 (19) When one or both parents are servicemembers or contemplating joining a
350 uniformed service, the parents should resolve issues of custodial responsibility in the event of
351 deployment as soon as practicable through reaching a voluntary agreement pursuant to Section
352 [78B-20-201](#) or through court order obtained pursuant to Section [30-3-10](#). Servicemembers
353 shall ensure their family care plan reflects orders and agreements entered and filed pursuant to
354 Title 78B, Chapter 20, Uniform Deployed Parents Custody, Parent-Time, and Visitation Act.

355 Section 7. Section **78B-20-102 (Effective 07/01/17)** is amended to read:

356 **78B-20-102 (Effective 07/01/17). Definitions.**

357 As used in this chapter:

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

360 (2) (a) "Caretaking authority" means the right to live with and care for a child on a
361 day-to-day basis. [~~The term~~]

362 (b) "Caretaking authority" includes physical custody, parent-time, right to access, and
363 visitation.

364 (3) "Child" means:

365 (a) an unemancipated individual who has not attained 18 years of age; or

366 (b) an adult son or daughter by birth or adoption, or under law of this state other than
367 this chapter, who is the subject of a court order concerning custodial responsibility.

368 (4) "Court" means a tribunal, including an administrative agency, authorized under the

369 law of this state other than this chapter to make, enforce, or modify a decision regarding
370 custodial responsibility.

371 (5) "Custodial responsibility" includes all powers and duties relating to caretaking
372 authority and decision-making authority for a child. The term includes physical custody, legal
373 custody, parent-time, right to access, visitation, and authority to grant limited contact with a
374 child.

375 (6) "Decision-making authority" means the power to make important decisions
376 regarding a child, including decisions regarding the child's education, religious training, health
377 care, extracurricular activities, and travel. The term does not include the power to make
378 decisions that necessarily accompany a grant of caretaking authority.

379 (7) "Deploying parent" means a servicemember who is deployed or has been notified of
380 impending deployment and is:

381 (a) a parent of a child under the law of this state other than this chapter; or

382 (b) an individual who has custodial responsibility for a child under the law of this state
383 other than this chapter.

384 (8) "Deployment" means the movement or mobilization of a servicemember for more
385 than 90 days but less than 18 months pursuant to uniformed service orders that:

386 (a) are designated as unaccompanied;

387 (b) do not authorize dependent travel; or

388 (c) otherwise do not permit the movement of family members to the location to which
389 the servicemember is deployed.

390 (9) "Family care plan" means a formal written contingency plan mandated by
391 regulation of the various departments and components of the uniformed service that requires
392 certain servicemember parents of minor children to plan in advance for the smooth, rapid
393 transfer of parental responsibilities to designees during the absence of the servicemember due
394 to death, incapacity, short-term absences, long-term absences, including deployments, or
395 noncombatant evacuation operations.

396 [~~(9)~~] (10) "Family member" means a sibling, aunt, uncle, cousin, stepparent, or
397 grandparent of a child, or an individual recognized to be in a familial relationship with a child
398 under the law of this state other than this chapter.

399 [~~(10)~~] (11) (a) "Limited contact" means the authority of a nonparent to visit a child for

400 a limited time. [~~The term~~]

401 (b) "Limited contact" includes authority to take the child to a place other than the
402 residence of the child.

403 [~~(11)~~] (12) "Nonparent" means an individual other than a deploying parent or other
404 parent.

405 [~~(12)~~] (13) "Other parent" means an individual who, in common with a deploying
406 parent, is:

407 (a) a parent of a child under the law of this state other than this chapter; or

408 (b) an individual who has custodial responsibility for a child under the law of this state
409 other than this chapter.

410 [~~(13)~~] (14) "Record" means information that is inscribed on a tangible medium or that
411 is stored in an electronic or other medium and is retrievable in perceivable form.

412 [~~(14)~~] (15) "Return from deployment" means the conclusion of a servicemember's
413 deployment as specified in uniformed service orders.

414 [~~(15)~~] (16) "Servicemember" means a member of a uniformed service.

415 [~~(16)~~] (17) "Sign" means, with present intent to authenticate or adopt a record:

416 (a) to execute or adopt a tangible symbol; or

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

419 [~~(17)~~] (18) "State" means a state of the United States, the District of Columbia, Puerto
420 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
421 jurisdiction of the United States.

422 [~~(18)~~] (19) "Uniformed service" means:

423 (a) active and reserve components of the United States armed forces;

424 (b) the United States Merchant Marine;

425 (c) the commissioned corps of the United States Public Health Service;

426 (d) the commissioned corps of the National Oceanic and Atmospheric Administration
427 of the United States; or

428 (e) the national guard of a state.

429 Section 8. Section **78B-20-201 (Effective 07/01/17)** is amended to read:

430 **78B-20-201 (Effective 07/01/17). Form of agreement.**

431 (1) The parents of a child may enter into a temporary agreement under this part
432 granting custodial responsibility during deployment. When the parents of a child include one or
433 more servicemembers, the parents should enter into an agreement granting custodial
434 responsibility before notice of deployment, but may also enter into an agreement granting
435 custodial responsibility following notice of deployment.

436 (2) An agreement under Subsection (1) shall be:

437 (a) in writing; and

438 (b) signed by both parents and any nonparent to whom custodial responsibility is
439 granted.

440 (3) Subject to Subsection (4), an agreement under Subsection (1), if feasible, shall:

441 (a) identify the destination, duration, and conditions of the deployment that is the basis
442 for the agreement if the deployment has been noticed;

443 (b) specify the allocation of caretaking authority among the deploying parent, the other
444 parent, and any nonparent;

445 (c) specify any decision-making authority that accompanies a grant of caretaking
446 authority;

447 (d) specify any grant of limited contact to a nonparent;

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

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

453 (g) specify the contact between the deploying parent and child during the time the
454 deploying parent is on leave or is otherwise available;

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

458 (i) provide that the agreement will terminate according to the procedures under Part 4,
459 Return from Deployment, after the deploying parent returns from deployment; and

460 (j) if the agreement is required to be filed pursuant to Section 78B-20-205, specify
461 which parent is required to file the agreement.

462 (4) The omission of any of the items specified in Subsection (3) does not invalidate an
463 agreement under this section.

464 (5) A servicemember shall ensure that the servicemember's family care plan reflects
465 orders and agreements entered and filed pursuant to this chapter.

466 Section 9. Section **78B-20-205 (Effective 07/01/17)** is amended to read:

467 **78B-20-205 (Effective 07/01/17). Filing agreement or power of attorney with**
468 **court.**

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

474 (2) Notwithstanding Subsection (1), failure to file an agreement or power of attorney
475 does not invalidate an otherwise valid agreement or power of attorney.

476 Section 10. Section **78B-20-401 (Effective 07/01/17)** is amended to read:

477 **78B-20-401 (Effective 07/01/17). Procedure for terminating temporary grant of**
478 **custodial responsibility established by agreement.**

479 (1) At any time after return from deployment, a temporary agreement granting
480 custodial responsibility under Part 2, Agreement Addressing Custodial Responsibility During
481 Deployment, may be terminated by an agreement to terminate signed by the deploying parent
482 and the other parent.

483 (2) A temporary agreement under Part 2, Agreement Addressing Custodial
484 Responsibility During Deployment, granting custodial responsibility terminates:

485 (a) if an agreement to terminate under Subsection (1) specifies a date for termination,
486 on that date; or

487 (b) if the agreement to terminate does not specify a date, on the date the agreement to
488 terminate is signed by the deploying parent and the other parent.

489 (3) In the absence of an agreement under Subsection (1) to terminate, a temporary
490 agreement granting custodial responsibility terminates under Part 2, Agreement Addressing
491 Custodial Responsibility During Deployment, ~~[60]~~ 30 days after the deploying parent gives
492 notice to the other parent that the deploying parent returned from deployment.

493 (4) If a temporary agreement granting custodial responsibility was filed with a court
494 pursuant to Section [78B-20-205](#), an agreement to terminate the temporary agreement shall also
495 be filed with that court within a reasonable time after the signing of the agreement. The case
496 number and heading of the case concerning custodial responsibility or child support shall be
497 provided to the court with the agreement to terminate.

498 Section 11. Section **78B-20-403 (Effective 07/01/17)** is amended to read:

499 **78B-20-403 (Effective 07/01/17). Visitation before termination of temporary grant**
500 **of custodial responsibility.**

501 After a deploying parent returns from deployment until a temporary agreement or order
502 for custodial responsibility established under Part 2, Agreement Addressing Custodial
503 Responsibility During Deployment, or a provision of a court order specifying temporary
504 custodial responsibility during deployment issued under Part 3, Judicial Procedure for Granting
505 Custodial Responsibility During Deployment, or Section [30-3-10](#), is terminated, the court shall
506 issue a temporary order granting the deploying parent reasonable contact with the child unless
507 it is contrary to the best interest of the child, even if the time of contact exceeds the time the
508 deploying parent spent with the child before deployment.

509 Section 12. Section **78B-20-404 (Effective 07/01/17)** is amended to read:

510 **78B-20-404 (Effective 07/01/17). Termination by operation of law of temporary**
511 **grant of custodial responsibility established by court order.**

512 (1) If an agreement between the parties to terminate a [~~temporary~~] court order for
513 temporary custodial responsibility during deployment under Part 3, Judicial Procedure for
514 Granting Custodial Responsibility During Deployment, or to terminate a provision of an order
515 for temporary custodial responsibility during deployment entered under Section [30-3-10](#) has
516 not been filed, the temporary order terminates [~~60~~] 30 days after the day on which the
517 deploying parent gives notice to the other parent and any nonparent granted custodial
518 responsibility that the deploying parent has returned from deployment.

519 (2) A proceeding seeking to prevent termination of a temporary order for custodial
520 responsibility is governed by the law of this state other than this chapter.

521 Section 13. **Effective date.**

522 This bill takes effect on July 1, 2017.

**Legislative Review Note
Office of Legislative Research and General Counsel**