EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

JUL 08 2016

2016 JUL 12 AM 10:49

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Tres Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

Dear Madame Speaker:

Transmitted herewith is Bill No. 291-33 (COR), **"AN ACT TO *ADD* A NEW CHAPTER 39A TO DIVISION 3 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO CUSTODY AND VISITATION OF DEPLOYED MILITARY PARENTS,"** which was signed into law on June 30, 2016, as **Public Law 33-167**.

Senseramente,

EDDIE BAZA CALVO

33-16-1778
Office of the Speaker
Judith T. Won Pat, Ed.D

Date: 7-11-16
Time: 12:11 pm
Received By: DMR

1778

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I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2016 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÅHEN GUÅHAN*

This is to certify that **Substitute Bill No. 291-33 (COR), "AN ACT TO *ADD* A NEW CHAPTER 39A TO DIVISION 3 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO CUSTODY AND VISITATION OF DEPLOYED MILITARY PARENTS,"** was on the 17th day of June 2016, duly and regularly passed.

Benjamin J. F. Cruz
Acting Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 20th day of June, 2016, at 5:25 o'clock p.M.

PO2 R.S. Mendiola HSCY
Assistant Staff Officer
Maga'låhi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date: JUN 30 2016

Public Law No. 33-167

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2016 (SECOND) Regular Session

Bill No. 291- 33 (COR)
As substituted by the Committee on the Guam U.S. Military Relocation, Public Safety, and Judiciary.

Introduced by:

Mary Camacho Torres
T. C. Ada
V. Anthony Ada
FRANK B. AGUON, JR.
Frank F. Blas, Jr.
B. J.F. Cruz
James V. Espaldon
Brant T. McCreadie
Tommy Morrison
T. R. Muña Barnes
R. J. Respicio
Dennis G. Rodriguez, Jr.
Michael F.Q. San Nicolas
N. B. Underwood, Ph.D.
Judith T. Won Pat, Ed.D.

AN ACT TO *ADD* A NEW CHAPTER 39A TO DIVISION 3 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO CUSTODY AND VISITATION OF DEPLOYED MILITARY PARENTS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the Uniform Deployed Parents Custody and Visitation Act (UDPCVA) addresses the wide variability in the ways that states handle child custody and visitation issues that arise when service members are deployed. Over sixteen

Doc No. 33GL-16-1778.

thousand (16,000) U.S. service members, comprised of Active Duty, Reserve, National Guard, Air Force, Army, Coast Guard, Marine Corps and Navy, serve their island and nation here on Guam. The operational tempo remains high for our military members and they are frequently called upon by our nation to deploy, leaving their homes for lengthy periods of time to fulfill their missions.

Many of our service members are parents and, like many families, have child custody and visitation issues that they deal with on a daily basis. Because of the mobile nature of military service, and because a child's other parent will often live in or move to a different state than the deployed service member, bringing the child with them, there are many times that these custody issues involve two (2) or more states. Yet different states now apply very different substantive law and court procedures from one another when custody issues arise on a parent's deployment. The resulting patchwork of rules makes it difficult for the parents to resolve these important issues quickly and fairly, hurts the ability of deploying parents to serve the country effectively, and interferes with the best interest of children. The UDPCVA provides uniform, expeditious, and fair disposition of cases involving the custody rights of a member of the military. The UDPCVA ensures a proper balance of interests — protecting the rights of the service member, the other parent, and above all, the best interest of the children involved.

Section 2. A new Chapter 39A is hereby *added* to Division 3 of Title 7, Guam Annotated Code, to read as follows:

"**CHAPTER 39A**

UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

ARTICLE 1

GENERAL PROVISIONS

§ 39A101. Short Title.

§ 39A102. Definitions.

§ 39A103. Remedies for Noncompliance.
§ 39A104. Jurisdiction.
§ 39A105. Notification Required of Deploying Parent.
§ 39A106. Duty to Notify of Change of Address.
§ 39A107. General Consideration in Custody Proceeding of Parent's Military Service.

ARTICLE 2
AGREEMENT ADDRESSING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

§ 39A201. Form of Agreement.
§ 39A202. Nature of Authority Created by Agreement.
§ 39A203. Modification of Agreement.
§ 39A204. Power of Attorney.
§ 39A205. Filing Agreement of Power of Attorney with Court.

ARTICLE 3
JUDICIAL PROCEDURE FOR GRANTING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

§ 39A301. Definition.
§ 39A302. Proceeding for Temporary Custody Order.
§ 39A303. Expedited Hearing.
§ 39A304. Testimony by Electronic Means.
§ 39A305. Effect of Prior Judicial Order or Agreement.
§ 39A306. Grant of Caretaking or Decision-Making Authority to Non Parent.
§ 39A307. Grant of Limited Contact.
§ 39A308. Nature of Authority Created by Temporary Custody Order.

Doc No. 33GL-16-1778.

§ 39A309. Content of Temporary Custody Order.
§ 39A310. Order for Child Support.
§ 39A311. Modifying or Terminating Grant of Custodial Responsibility to Nonparent.
ARTICLE 4
RETURN FROM DEPLOYMENT
§ 39A401. Procedure for Terminating Temporary Grant of Custodial Responsibility Established by Agreement.
§ 39A402. Consent Procedure for Terminating Temporary Grant of Custodial Responsibility Established by Court Order.
§ 39A403. Visitation Before Termination of Temporary Grant of Custodial Responsibility.
§ 39A404. Termination by Operation of Law of Temporary Grant of Custodial Responsibility Established by Court Order.
ARTICLE 5
MISCELLANEOUS PROVISIONS
§ 39A501. Uniformity of Application and Construction.
§ 39A502. Relation to Electronic Signatures in Global and National Commerce Act.
§ 39A503. Savings Clause.

ARTICLE 1
GENERAL PROVISIONS

§ 39A101. Short Title. §§ 39A102 through 39A503, inclusive, of this Act *shall* be known and may be cited as the "Uniform Deployed Parents Custody and Visitation Act (UDPCVA)."

§ 39A102. Definitions.

Doc No. 33GL-16-1778.

(a) *Adult* means an individual who has attained eighteen (18) years of age or an emancipated minor.

(b) *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.

(c) *Child* means:

(1) an unemancipated individual who has not attained eighteen (18) years of age; or

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

(d) *Court* means a tribunal, including an administrative agency, authorized under law of Guam other than this Act to make, enforce, or modify a decision regarding custodial responsibility.

(e) *Custodial responsibility* includes all powers and duties relating to caretaking authority and decision-making authority for a child. The term includes physical custody, legal custody, parenting time, right to access, visitation, and authority to grant limited contact with a child.

(f) *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.

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

(1) a parent of a child under law of this state other than this Act; or

(2) an individual who has custodial responsibility for a child under law of this state other than this Act.

(h) *Deployment* means the movement or mobilization of a service member for more than ninety (90) days, but less than eighteen (18) months pursuant to uniformed service orders that:

(1) are designated as unaccompanied;

(2) do not authorize dependent travel; or

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

(i) *Family member* means a sibling, aunt, uncle, cousin, stepparent, grandparent, or legal guardian of a child or an individual recognized to be in a familial relationship with a child under law of this state other than this Act.

(j) *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.

(k) *Nonparent* means an individual other than a deploying parent or other parent.

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

(1) a parent of a child under law of this state other than this Act; or

(2) an individual who has custodial responsibility for a child under law of this state other than this Act.

(m) *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.

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

(o) *Service member* means a member of a uniformed service.

(p) *Sign* means, with present intent to authenticate or adopt a record:

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

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

(q) *State* means a state of the United States, the District of Columbia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(r) *Uniformed service* means:

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

(2) the United States Merchant Marine;

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

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

(5) the National Guard of a state or U.S. territory or possession.

§ 39A103. Remedies for Noncompliance. In addition to other remedies under law of Guam other than this Act, if a court finds that a party to a proceeding under this Act has acted in bad faith or intentionally failed to comply with this Act or a court order issued under this Act, the court may assess reasonable attorney's fees and costs against the party and order other appropriate relief.

Doc No. 33GL-16-1778.

1 **§ 39A104. Jurisdiction.**

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

5 (b) If a court has issued a temporary order regarding custodial
6 responsibility pursuant to Article 3, the residence of the deploying parent is
7 not changed by reason of the deployment for the purposes of the Uniform
8 Child Custody Jurisdiction and Enforcement Act during the deployment.

9 (c) If a court has issued a permanent order regarding custodial
10 responsibility before notice of deployment and the parents modify that order
11 temporarily by agreement pursuant to Article 2, the residence of the deploying
12 parent is not changed by reason of the deployment for the purposes of the
13 Uniform Child Custody Jurisdiction and Enforcement Act.

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

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

22 **§ 39A105. Notification Required of Deploying Parent.**

23 (a) Except as otherwise provided in Subsection (d) and subject to
24 Subsection (c), a deploying parent *shall* notify in a record the other parent of
25 a pending deployment no later than seven (7) days after receiving notice of
26 deployment unless reasonably prevented from doing so by the circumstances
27 of service. If the circumstances of service prevent giving notification within

the seven (7) days, the deploying parent *shall* give the notification as soon as reasonably possible.

(b) Except as otherwise provided in Subsection (d) and subject to Subsection (c), 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).

(c) Disclosure of addresses and contact information *shall* comply with 19 GCA §§ 5122-5123. 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), or notification of a plan for custodial responsibility during deployment under Subsection (b), 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 Subsections (a) or (b) 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.

§ 39A106. Duty to Notify of Change of Address.

(a) Except as otherwise provided in Subsection (b), an individual to whom custodial responsibility has been granted during deployment pursuant to Articles 2 or 3 *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) 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.

§ 39A107. 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.

ARTICLE 2
AGREEMENT ADDRESSING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

§ 39A201. Form of Agreement.

(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) must be:

(1) in writing; and

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

(c) Subject to Subsection (d), an agreement under Subsection (a), if feasible, must:

(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 under Article 4 after the deploying parent returns from deployment; and

(10) if the agreement must be filed pursuant to § 39A205, specify which parent is required to file the agreement.

Doc No. 33GL-16-1778.

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

§ 39A202. Nature of Authority Created by Agreement.

(a) An agreement under this Article is temporary and terminates pursuant to Article 4 after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under § 39A203. 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 § 39A203, or under Article 4.

§ 39A203. 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) before deployment of a deploying parent, the modification must 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) during deployment of a deploying parent, the modification must be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

§ 39A204. 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 Act, 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.

§ 39A205. Filing Agreement of Power of Attorney with Court. An agreement or power of attorney under this Article must 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 must be provided to the court with the agreement or power.

ARTICLE 3

JUDICIAL PROCEDURE FOR GRANTING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

§ 39A301. Definition. In this Article, *close and substantial relationship* means a relationship in which a significant bond exists between a child and a nonparent.

§ 39A302. 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 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.

(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 must be filed in a pending

Doc No. 33GL-16-1778.

proceeding for custodial responsibility in a court with jurisdiction under § 39A104 or, if there is no pending proceeding in a court with jurisdiction under § 39A104, in a new action for granting custodial responsibility during deployment.

§ 39A303. Expedited Hearing. If a motion to grant custodial responsibility is filed under § 39A302 (b) before a deploying parent deploys, the court *shall* conduct an expedited hearing.

§ 39A304. 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.

§ 39A305. Effect of Prior Judicial Order or Agreement. In a proceeding for a grant of custodial responsibility pursuant to this Article, the following rules apply:

(a) A prior judicial order designating custodial responsibility in the event of deployment is binding on the court unless the circumstances meet the requirements of law of this state other than this Act for modifying a judicial order regarding custodial responsibility.

(b) 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 Article 2, unless the court finds that the agreement is contrary to the best interest of the child.

§ 39A306. Grant of Caretaking or Decision-Making Authority to Non Parent.

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

Doc No. 33GL-16-1778.

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) 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.

§ 39A307. Grant of Limited Contact. On motion of a deploying parent, and in accordance with law of this state other than this Act 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.

§ 39A308. Nature of Authority Created by Temporary Custody Order.

(a) A grant of authority under this Article is temporary and terminates under Article 4 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 has standing to enforce the grant until it is terminated by court order or under Article 4.

§ 39A309. Content of Temporary Custody Order.

(a) An order granting custodial responsibility under this Article must:

(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 must:

(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 (1) 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 Article 4 after the deploying parent returns from deployment.

§ 39A310. 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 Article 2, the court may enter a temporary order for child support consistent with law of this state other than this Act if the court has jurisdiction under the Uniform Interstate Family Support Act.

§ 39A311. Modifying or Terminating Grant of Custodial Responsibility to Nonparent.

(a) Except for an order under § 39A305, except as otherwise provided in Subsection (b), and consistent with the Servicemembers Civil Relief Act, 50 U.S.C. Appendix Sections 521 and 522, 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 Article 4 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.

ARTICLE 4

RETURN FROM DEPLOYMENT

§ 39A401. 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 Article 2 may be terminated by an agreement to terminate signed by the deploying parent and the other parent.

(b) A temporary agreement under Article 2 granting custodial responsibility terminates:

(1) if an agreement to terminate under Subsection (a) 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) to terminate, a temporary agreement granting custodial responsibility terminates under Article 2 sixty (60) 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 § 39A205, an agreement to terminate the temporary agreement also must 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 must be provided to the court with the agreement to terminate.

§ 39A402. 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 issued under Article 3. 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.

§ 39A403. 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 Article 2 or 3 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.

§ 39A404. 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 Article 3 has *not* been filed, the order terminates sixty (60) 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 Act.

ARTICLE 5

MISCELLANEOUS PROVISIONS

§ 39A501. Uniformity of Application and Construction. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 39A502. 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. 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).

§ 39A503. Savings Clause. This Act *does not* affect the validity of a temporary court order concerning custodial responsibility during deployment which was entered before."