

April 25, 2016; Deployment and Custodial Issues

Serving in the military and raising children aren't always compatible tasks. This is especially true when a parent gets deployed. The situation can be even more complicated, and unsettling, when the parents are divorced or separated. If the deploying parent has custody of the child, who should care for the child during the military member's absence? Should the other parent automatically take custody of the child, or should the military member with custody be able to designate someone else to serve as a temporary custodian?

Unfortunately, the answer to this question often depends on the laws of the state that has jurisdiction over the custody issue. And, because each state has the right to make its own laws governing custody decisions, the answer may differ from one state to another. When the parents live in different states, conflicts in law may arise. The situation can be very confusing, even for lawyers. What's a military parent to do?

This is the type of situation where the services of the Uniform Law Commission (ULC) come into play. Established in 1892, the ULC, is a non-profit, organization that provides states with non-partisan legislation that helps to bring uniformity, clarity, and stability across the nation to certain areas of law. A total of 300 volunteer lawyers serve as uniform law commissioners. They are responsible for drafting the legislation. The commissioners come from all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. For some reason, Guam does not have a commissioner on the ULC. This oversight should be immediately remedied.

Working together, the commissioners draft model statutes in areas of the law where uniformity among the states is desirable. Over the past 124 years, the ULC has drafted more than 300 uniform laws in a wide variety of legal fields. Typically, these fields include commercial law, family law, real property law, estate and probate law, business organization law, health law, and conflicts of interest.

The ULC's model laws are only proposals. Legislatures from each state must decide for itself whether or not to pass the legislation. A state legislature may adopt the proposed model law exactly as written by the ULC, or the legislature may modify the law as it sees fit. Obviously, the ULC strongly recommends that legislatures keep the law as close to the original version as possible to assure uniformity across all state and territory borders.

Several years ago, the ULC turned its attention to the plight of military service members trying to juggle their military duties along with their parental obligations. This delicate juggling act is complicated by the fact that many service members with children are single and exercise primary physical custody over their children. In such a situation, orders to deploy can lead to severe anxiety and confusion on how best to address the situation.

As a result, the Department of Defense expressed concern for the fact that custodial uncertainties can undermine the overall war effort and interfere with a service member's ability to satisfactorily complete assigned missions. Family law attorneys and judges have also expressed their collective frustration with the fact that there are no established uniform ground rules to resolve custodial issues that cross state and territorial boundaries.

For several years, the ULC worked on model legislation to address these concerns. In 2012, the ULC unveiled the Uniform Deployed Parent Custody and Visitation Act (UDPCVA). So far, 10 states have passed the Act. Most of the remaining states have the legislation pending or have passed similar legislation.

Senator Mary Camacho Torres has recently introduced the UDPCVA in the Guam Legislature as Bill No. 291-33. In Section 1 of the Bill, she notes that "over 16,000 Servicemembers, comprised of Active Duty, Reserve, National Guard, Air Force, Army, Coast Guard, Marine Corps and Navy, serve their nation here on Guam. . . . Many of our Servicemembers are parents, and in some cases, have primary or sole custody over their children. . . . [M]any times . . . custody issues involve two or more states. [A] 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."

I encourage the community to take the time to read and discuss this important legislation. With so many Guamanians serving in the military, we need to address this matter now rather than later. Next week, I'll go over the Bill's highlights.