

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2122

Introduced by

Judiciary Committee

(At the request of the Uniform Commission on State Laws)

1 A BILL for an Act to create and enact chapter 14-09.3 of the North Dakota Century Code,
2 relating to the Uniform Deployed Parents Custody and Visitation Act; to amend and reenact
3 sections 14-09-06.2 and 14-09-06.6 of the North Dakota Century Code, relating to best interests
4 and welfare of the child factors and limitation on postjudgment modifications; and to provide for
5 application.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 14-09-06.2 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **14-09-06.2. Best interests and welfare of child - Court consideration - Factors.**

- 10 1. For the purpose of parental rights and responsibilities, the best interests and welfare of
11 the child is determined by the court's consideration and evaluation of all factors
12 affecting the best interests and welfare of the child. These factors include all of the
13 following when applicable:
- 14 a. The love, affection, and other emotional ties existing between the parents and
15 child and the ability of each parent to provide the child with nurture, love,
16 affection, and guidance.
 - 17 b. The ability of each parent to assure that the child receives adequate food,
18 clothing, shelter, medical care, and a safe environment.
 - 19 c. The child's developmental needs and the ability of each parent to meet those
20 needs, both in the present and in the future.
 - 21 d. The sufficiency and stability of each parent's home environment, the impact of
22 extended family, the length of time the child has lived in each parent's home, and
23 the desirability of maintaining continuity in the child's home and community.

- 1 e. The willingness and ability of each parent to facilitate and encourage a close and
2 continuing relationship between the other parent and the child.
- 3 f. The moral fitness of the parents, as that fitness impacts the child.
- 4 g. The mental and physical health of the parents, as that health impacts the child.
- 5 h. The home, school, and community records of the child and the potential effect of
6 any change.
- 7 i. If the court finds by clear and convincing evidence that a child is of sufficient
8 maturity to make a sound judgment, the court may give substantial weight to the
9 preference of the mature child. The court also shall give due consideration to
10 other factors that may have affected the child's preference, including whether the
11 child's preference was based on undesirable or improper influences.
- 12 j. Evidence of domestic violence. In determining parental rights and responsibilities,
13 the court shall consider evidence of domestic violence. If the court finds credible
14 evidence that domestic violence has occurred, and there exists one incident of
15 domestic violence which resulted in serious bodily injury or involved the use of a
16 dangerous weapon or there exists a pattern of domestic violence within a
17 reasonable time proximate to the proceeding, this combination creates a
18 rebuttable presumption that a parent who has perpetrated domestic violence may
19 not be awarded residential responsibility for the child. This presumption may be
20 overcome only by clear and convincing evidence that the best interests of the
21 child require that parent have residential responsibility. The court shall cite
22 specific findings of fact to show that the residential responsibility best protects the
23 child and the parent or other family or household member who is the victim of
24 domestic violence. If necessary to protect the welfare of the child, residential
25 responsibility for a child may be awarded to a suitable third person, provided that
26 the person would not allow access to a violent parent except as ordered by the
27 court. If the court awards residential responsibility to a third person, the court
28 shall give priority to the child's nearest suitable adult relative. The fact that the
29 abused parent suffers from the effects of the abuse may not be grounds for
30 denying that parent residential responsibility. As used in this subdivision,
31 "domestic violence" means domestic violence as defined in section 14-07.1-01. A

1 court may consider, but is not bound by, a finding of domestic violence in another
2 proceeding under chapter 14-07.1.

3 k. The interaction and interrelationship, or the potential for interaction and
4 interrelationship, of the child with any person who resides in, is present, or
5 frequents the household of a parent and who may significantly affect the child's
6 best interests. The court shall consider that person's history of inflicting, or
7 tendency to inflict, physical harm, bodily injury, assault, or the fear of physical
8 harm, bodily injury, or assault, on other persons.

9 l. The making of false allegations not made in good faith, by one parent against the
10 other, of harm to a child as defined in section 50-25.1-02.

11 m. Any other factors considered by the court to be relevant to a particular parental
12 rights and responsibilities dispute.

13 2. In a proceeding for parental rights and responsibilities of a child of a servicemember, a
14 court may not consider a parent's past deployment or possible future deployment in
15 itself in determining the best interests of the child but may consider any significant
16 impact on the best interests of the child of the parent's past or possible future
17 deployment.

18 3. In any proceeding under this chapter, the court, at any stage of the proceedings after
19 final judgment, may make orders about what security is to be given for the care,
20 custody, and support of the unmarried minor children of the marriage as from the
21 circumstances of the parties and the nature of the case is equitable.

22 **SECTION 2. AMENDMENT.** Section 14-09-06.6 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **14-09-06.6. Limitations on postjudgment modifications of primary residential**
25 **responsibility.**

26 1. Unless agreed to in writing by the parties, or if included in the parenting plan, no
27 motion for an order to modify primary residential responsibility may be made earlier
28 than two years after the date of entry of an order establishing primary residential
29 responsibility, except in accordance with subsection 3.

30 2. Unless agreed to in writing by the parties, or if included in the parenting plan, if a
31 motion for modification has been disposed of upon its merits, no subsequent motion

1 may be filed within two years of disposition of the prior motion, except in accordance
2 with subsection 5.

- 3 3. The time limitation in subsections 1 and 2 does not apply if the court finds:
- 4 a. The persistent and willful denial or interference with parenting time;
 - 5 b. The child's present environment may endanger the child's physical or emotional
6 health or impair the child's emotional development; or
 - 7 c. The primary residential responsibility for the child has changed to the other
8 parent for longer than six months.

9 4. A party seeking modification of an order concerning primary residential responsibility
10 shall serve and file moving papers and supporting affidavits and shall give notice to
11 the other party to the proceeding who may serve and file a response and opposing
12 affidavits. The court shall consider the motion on briefs and without oral argument or
13 evidentiary hearing and shall deny the motion unless the court finds the moving party
14 has established a prima facie case justifying a modification. The court shall set a date
15 for an evidentiary hearing only if a prima facie case is established.

- 16 5. The court may not modify the primary residential responsibility within the two-year
17 period following the date of entry of an order establishing primary residential
18 responsibility unless the court finds the modification is necessary to serve the best
19 ~~interest~~interests of the child and:
- 20 a. The persistent and willful denial or interference with parenting time;
 - 21 b. The child's present environment may endanger the child's physical or emotional
22 health or impair the child's emotional development; or
 - 23 c. The residential responsibility for the child has changed to the other parent for
24 longer than six months.

- 25 6. The court may modify the primary residential responsibility after the two-year period
26 following the date of entry of an order establishing primary residential responsibility if
27 the court finds:
- 28 a. On the basis of facts that have arisen since the prior order or which were
29 unknown to the court at the time of the prior order, a material change has
30 occurred in the circumstances of the child or the parties; and
 - 31 b. The modification is necessary to serve the best ~~interest~~interests of the child.

1 7. The court may modify a prior order concerning primary residential responsibility at any
2 time if the court finds a stipulated agreement by the parties to modify the order is in the
3 best interestinterests of the child.

4 8. Upon a motion to modify primary residential responsibility under this section, the
5 burden of proof is on the moving party.

6 9. ~~If a motion for change of primary parental responsibility is filed during the time a parent
7 is in active duty service, the court may not enter an order modifying or amending a
8 previous judgment or order, or issue a new order, which changes the child's placement
9 that existed on the date the parent was called to active duty service, except the court
10 may enter a temporary order concerning residential responsibility which is in the best
11 interest of the child. The temporary order must explicitly provide that residential
12 responsibility must be restored to the service member upon the service member's
13 release from active duty service, unless the court finds by clear and convincing
14 evidence that restoration of residential responsibility would not be in the best interest
15 of the child. If an original decision concerning primary residential responsibility is
16 pending and the service member is alerted for active duty service, or is absent for
17 active duty service, the court may not issue a permanent order until the return of the
18 service member from active duty. The court may issue a temporary order concerning
19 primary residential responsibility in the best interest of the child for the time period of
20 the active duty service. This section does not prevent a service member from
21 consenting to a modification that continues past discharge or release from active duty
22 service or to agreeing to a permanent order before release from active duty service.
23 For purposes of this section, "service member" means a member of the national guard
24 or a reserve unit of the United States armed forces and "active duty service" means an
25 order to active duty under United States Code title 10.~~

26 **SECTION 3.** Chapter 14-09.3 of the North Dakota Century Code is created and enacted as
27 follows:

28 **14-09.3-01. (102) Definitions.**

29 1. "Adult" means an individual who has attained eighteen years of age or an
30 emancipated minor.

- 1 2. "Caretaking authority" means the right to live with and care for a child on a day-to-day
2 basis. The term includes physical custody, parenting time, right to access, and
3 visitation.
- 4 3. "Child" means:
- 5 a. An unemancipated individual who has not attained eighteen years of age; or
6 b. An adult son or daughter by birth or adoption, or under law of this state other than
7 this chapter, who is the subject of a court order concerning custodial
8 responsibility.
- 9 4. "Court" means a tribunal authorized under law of this state other than this chapter to
10 make, enforce, or modify a decision regarding custodial responsibility.
- 11 5. "Custodial responsibility" includes all powers and duties relating to caretaking authority
12 and decisionmaking authority for a child. The term includes physical custody, legal
13 custody, parenting time, right to access, visitation, and authority to grant limited
14 contact with a child.
- 15 6. "Decisionmaking authority" means the power to make important decisions regarding a
16 child, including decisions regarding the child's education, religious training, health
17 care, extracurricular activities, and travel. The term does not include the power to
18 make decisions that necessarily accompany a grant of caretaking authority.
- 19 7. "Deploying parent" means a servicemember, who is deployed or has been notified of
20 impending deployment and is:
- 21 a. A parent of a child under law of this state other than this chapter; or
22 b. An individual who has custodial responsibility for a child under law of this state
23 other than this chapter.
- 24 8. "Deployment" means the movement or mobilization of a servicemember for more than
25 ninety days but less than eighteen months pursuant to uniformed service orders that:
- 26 a. Are designated as unaccompanied;
27 b. Do not authorize dependent travel; or
28 c. Otherwise do not permit the movement of family members to the location to
29 which the servicemember is deployed.

- 1 9. "Family member" means a sibling, aunt, uncle, cousin, stepparent, or grandparent of a
2 child or an individual recognized to be in a familial relationship with a child under law
3 of this state other than this chapter.
- 4 10. "Limited contact" means the authority of a nonparent to visit a child for a limited time.
5 The term includes authority to take the child to a place other than the residence of the
6 child.
- 7 11. "Nonparent" means an individual other than a deploying parent or other parent.
- 8 12. "Other parent" means an individual who, in common with a deploying parent, is:
9 a. A parent of a child under law of this state other than this chapter; or
10 b. An individual who has custodial responsibility for a child under law of this state
11 other than this chapter.
- 12 13. "Record" means information that is inscribed on a tangible medium or that is stored in
13 an electronic or other medium and is retrievable in perceivable form.
- 14 14. "Return from deployment" means the conclusion of a servicemember's deployment as
15 specified in uniformed service orders.
- 16 15. "Servicemember" means a member of a uniformed service.
- 17 16. "Sign" means, with present intent to authenticate or adopt a record:
18 a. To execute or adopt a tangible symbol; or
19 b. To attach to or logically associate with the record an electronic symbol, sound, or
20 process.
- 21 17. "State" means a state of the United States, the District of Columbia, Puerto Rico, the
22 United States Virgin Islands, or any territory or insular possession subject to the
23 jurisdiction of the United States.
- 24 18. "Uniformed service" means:
25 a. Active and reserve components of the army, navy, air force, marine corps, or
26 coast guard of the United States;
27 b. The United States merchant marine;
28 c. The commissioned corps of the United States public health service;
29 d. The commissioned corps of the national oceanic and atmospheric administration
30 of the United States; or
31 e. The national guard of a state.

1 **14-09.3-02. (103) Remedies for noncompliance.**

2 In addition to other remedies under law of this state other than this chapter, if a court finds
3 that a party to a proceeding under this chapter has acted in bad faith or intentionally failed to
4 comply with this chapter or a court order issued under this chapter, the court may assess
5 reasonable attorney's fees and costs against the party and order other appropriate relief.

6 **14-09.3-03. (104) Jurisdiction.**

- 7 1. A court may issue an order regarding custodial responsibility under this chapter only if
8 the court has jurisdiction under chapter 14-14.1.
- 9 2. If a court has issued a temporary order regarding custodial responsibility pursuant to
10 sections 14-09.3-11 through 14-09.3-21, the residence of the deploying parent is not
11 changed by reason of the deployment for the purposes of chapter 14-14.1 during the
12 deployment.
- 13 3. If a court has issued a permanent order regarding custodial responsibility before notice
14 of deployment and the parents modify that order temporarily by agreement pursuant to
15 sections 14-09.3-07 through 14-09.3-10, the residence of the deploying parent is not
16 changed by reason of the deployment for the purposes of chapter 14-14.1.
- 17 4. If a court in another state has issued a temporary order regarding custodial
18 responsibility as a result of impending or current deployment, the residence of the
19 deploying parent is not changed by reason of the deployment for the purposes of
20 chapter 14-14.1.
- 21 5. This section does not prevent a court from exercising temporary emergency
22 jurisdiction under chapter 14-14.1.

23 **14-09.3-04. (105) Notification required of deploying or redeploying parent.**

- 24 1. Except as otherwise provided in subsection 4 and subject to subsection 3, a deploying
25 parent shall notify in a record the other parent of a pending deployment or
26 redeployment not later than seven days after receiving notice of deployment or
27 redeployment unless reasonably prevented from doing so by the circumstances of
28 service. If the circumstances of service prevent giving notification within the seven
29 days, the deploying or redeploying parent shall give the notification as soon as
30 reasonably possible.

- 1 2. Except as otherwise provided in subsection 4 and subject to subsection 3, each parent
2 shall provide in a record the other parent with a plan for fulfilling that parent's share of
3 custodial responsibility during deployment. Each parent shall provide the plan as soon
4 as reasonably possible after notification of deployment is given under subsection 1.
- 5 3. If a court order currently in effect prohibits disclosure of the address or contact
6 information of the other parent, notification of deployment under subsection 1, or
7 notification of a plan for custodial responsibility during deployment under subsection 2,
8 may be made only to the issuing court. If the address of the other parent is available to
9 the issuing court, the court shall forward the notification to the other parent. The court
10 shall keep confidential the address or contact information of the other parent.
- 11 4. Notification in a record under subsection 1 or 2 is not required if the parents are living
12 in the same residence and both parents have actual notice of the deployment or plan.
- 13 5. In a proceeding regarding custodial responsibility, a court may consider the
14 reasonableness of a parent's efforts to comply with this section.

15 **14-09.3-05. (106) Duty to notify of change of address.**

- 16 1. Except as otherwise provided in subsection 2, an individual to whom custodial
17 responsibility has been granted during deployment pursuant to sections 14-09.3-07
18 through 14-09.3-10 or sections 14-09.3-11 through 14-09.3-21 shall notify the
19 deploying parent and any other individual with custodial responsibility of a child of any
20 change of the individual's mailing address or residence until the grant is terminated.
21 The individual shall provide the notice to any court that has issued a custody or child
22 support order concerning the child which is in effect.
- 23 2. If a court order currently in effect prohibits disclosure of the address or contact
24 information of an individual to whom custodial responsibility has been granted, a
25 notification under subsection 1 may be made only to the court that issued the order.
26 The court shall keep confidential the mailing address or residence of the individual to
27 whom custodial responsibility has been granted.

28 **14-09.3-06. (201) Form of agreement.**

- 29 1. The parents of a child may enter into a temporary agreement under sections
30 14-09.3-07 through 14-09.3-10 granting custodial responsibility during deployment.
- 31 2. An agreement under subsection 1 must be:

- 1 a. In writing; and
- 2 b. Signed by both parents and any nonparent to whom custodial responsibility is
- 3 granted.
- 4 3. Subject to subsection 4, an agreement under subsection 1, if feasible, must:
- 5 a. Identify the destination, duration, and conditions of the deployment that is the
- 6 basis for the agreement;
- 7 b. Specify the allocation of caretaking authority among the deploying parent, the
- 8 other parent, and any nonparent;
- 9 c. Specify any decisionmaking authority that accompanies a grant of caretaking
- 10 authority;
- 11 d. Specify any grant of limited contact to a nonparent;
- 12 e. If under the agreement custodial responsibility is shared by the other parent and
- 13 a nonparent, or by other nonparents, provide a process to resolve any dispute
- 14 that may arise;
- 15 f. Specify the frequency, duration, and means, including electronic means, by which
- 16 the deploying parent will have contact with the child, any role to be played by the
- 17 other parent in facilitating the contact, and the allocation of any costs of contact;
- 18 g. Specify the contact between the deploying parent and child during the time the
- 19 deploying parent is on leave or is otherwise available;
- 20 h. Acknowledge that any party's child support obligation cannot be modified by the
- 21 agreement, and that changing the terms of the obligation during deployment
- 22 requires modification in the appropriate court;
- 23 i. Provide that the agreement will terminate according to the procedures under
- 24 sections 14-09.3-22 through 14-09.3-25 after the deploying parent returns from
- 25 deployment; and
- 26 j. If the agreement must be filed pursuant to section 14-09.3-10, specify which
- 27 parent is required to file the agreement.
- 28 4. The omission of any of the items specified in subsection 3 does not invalidate an
- 29 agreement under this section.

1 **14-09.3-07. (202) Nature of authority created by agreement.**

- 2 1. An agreement under sections 14-09.3-07 through 14-09.3-10 is temporary and
3 terminates pursuant to sections 14-09.3-22 through 14-09.3-25 after the deploying
4 parent returns from deployment, unless the agreement has been terminated before
5 that time by court order or modification under section 14-09.3-08. The agreement does
6 not create an independent, continuing right to caretaking authority, decisionmaking
7 authority, or limited contact in an individual to whom custodial responsibility is given.
8 2. A nonparent who has caretaking authority, decisionmaking authority, or limited contact
9 by an agreement under sections 14-09.3-07 through 14-09.3-10 has standing to
10 enforce the agreement until it has been terminated by court order, by modification
11 under section 14-09.3-08, or under sections 14-09.3-22 through 14-09.3-25.

12 **14-09.3-08. (203) Modification of agreement.**

- 13 1. By mutual consent, the parents of a child may modify an agreement regarding
14 custodial responsibility made pursuant to sections 14-09.3-07 through 14-09.3-10.
15 2. If an agreement is modified under subsection 1 before deployment of a deploying
16 parent, the modification must be in writing and signed by both parents and any
17 nonparent who will exercise custodial responsibility under the modified agreement.
18 3. If an agreement is modified under subsection 1 during deployment of a deploying
19 parent, the modification must be agreed to in a record by both parents and any
20 nonparent who will exercise custodial responsibility under the modified agreement.

21 **14-09.3-09. (204) Power of attorney.**

22 A deploying parent, by power of attorney, may delegate all or part of custodial responsibility
23 to an adult nonparent for the period of deployment if no other parent possesses custodial
24 responsibility under law of this state other than this chapter, or if a court order currently in effect
25 prohibits contact between the child and the other parent. The deploying parent may revoke the
26 power of attorney by signing a revocation of the power.

27 **14-09.3-10. (205) Filing agreement or power of attorney with court.**

28 An agreement or power of attorney under sections 14-09.3-07 through 14-09.3-10 must be
29 filed within a reasonable time with any court that has entered an order on custodial
30 responsibility or child support that is in effect concerning the child who is the subject of the

1 agreement or power. The case number and heading of the pending case concerning custodial
2 responsibility or child support must be provided to the court with the agreement or power.

3 **14-09.3-11. (301) Definition.**

4 In sections 14-09.3-11 through 14-09.3-21, "close and substantial relationship" means a
5 relationship in which a significant bond exists between a child and a nonparent.

6 **14-09.3-12. (302) Proceeding for temporary custody order.**

- 7 1. After a deploying parent receives notice of deployment and until the deployment
8 terminates, a court may issue a temporary order granting custodial responsibility
9 unless prohibited by the federal Servicemembers Civil Relief Act [50 U.S.C. appendix
10 sections 521 and 522]. A court may not issue a permanent order granting custodial
11 responsibility without the consent of the deploying parent.
- 12 2. At any time after a deploying parent receives notice of deployment, either parent may
13 file a motion regarding custodial responsibility of a child during deployment. The
14 motion must be filed in a pending proceeding for custodial responsibility in a court with
15 jurisdiction under section 14-09.3-03 or, if there is no pending proceeding in a court
16 with jurisdiction under section 14-09.3-03, in a new action for granting custodial
17 responsibility during deployment.

18 **14-09.3-13. (303) Expedited hearing.**

19 If a motion to grant custodial responsibility is filed under subsection 2 of section 14-09.3-12
20 before a deploying parent deploys, the court shall conduct an expedited hearing.

21 **14-09.3-14. (304) Testimony by electronic means.**

22 In a proceeding under sections 14-09.3-11 through 14-09.3-21, a party or witness who is
23 not reasonably available to appear personally may appear, provide testimony, and present
24 evidence by electronic means unless the court finds good cause to require a personal
25 appearance.

26 **14-09.3-15. (305) Effect of prior judicial order or agreement.**

27 In a proceeding for a grant of custodial responsibility pursuant to sections 14-09.3-11
28 through 14-09.3-21, the following rules apply:

- 29 1. A prior judicial order designating custodial responsibility in the event of deployment is
30 binding on the court unless the circumstances meet the requirements of law of this

1 state other than this chapter for modifying a judicial order regarding custodial
2 responsibility.

3 2. The court shall enforce a prior written agreement between the parents for designating
4 custodial responsibility in the event of deployment, including an agreement executed
5 under sections 14-09.3-07 through 14-09.3-10, unless the court finds that the
6 agreement is contrary to the best interests of the child.

7 **14-09.3-16. (306) Grant of caretaking or decisionmaking authority to nonparent.**

8 1. On motion of a deploying parent and in accordance with the laws of this state other
9 than this chapter, if it is in the best interests of the child, a court may grant caretaking
10 authority to a nonparent who is an adult family member of the child or an adult with
11 whom the child has a close and substantial relationship.

12 2. Unless a grant of caretaking authority to a nonparent under subsection 1 is agreed to
13 by the other parent, the grant is limited to an amount of time not greater than:

14 a. The amount of time granted to the deploying parent under a permanent custody
15 order, but the court may add unusual travel time necessary to transport the child;
16 or

17 b. In the absence of a permanent custody order that is currently in effect, the
18 amount of time that the deploying parent habitually cared for the child before
19 being notified of deployment, but the court may add unusual travel time
20 necessary to transport the child.

21 3. A court may grant part of a deploying parent's decisionmaking authority, if the
22 deploying parent is unable to exercise that authority, to a nonparent who is an adult
23 family member of the child or an adult with whom the child has a close and substantial
24 relationship. If a court grants the authority to a nonparent, the court shall specify the
25 decisionmaking powers granted, including decisions regarding the child's education,
26 religious training, health care, extracurricular activities, and travel.

27 **14-09.3-17. (307) Grant of limited contact.**

28 On motion of a deploying parent, and in accordance with the laws of this state other than
29 this chapter, unless the court finds that the contact would be contrary to the best interests of the
30 child, a court shall grant limited contact to a nonparent who is a family member of the child or an
31 individual with whom the child has a close and substantial relationship.

1 **14-09.3-18. (308) Nature of authority created by temporary custody order.**

- 2 1. A grant of authority under sections 14-09.3-11 through 14-09.3-21 is temporary and
3 terminates under sections 14-09.3-22 through 14-09.3-25 after the return from
4 deployment of the deploying parent, unless the grant has been terminated before that
5 time by court order. The grant does not create an independent, continuing right to
6 caretaking authority, decisionmaking authority, or limited contact in an individual to
7 whom it is granted.
- 8 2. A nonparent granted caretaking authority, decisionmaking authority, or limited contact
9 under sections 14-09.3-11 through 14-09.3-21 has standing to enforce the grant until it
10 is terminated by court order or under sections 14-09.3-22 through 14-09.3-25.

11 **14-09.3-19. (309) Content of temporary custody order.**

- 12 1. An order granting custodial responsibility under sections 14-09.3-11 through
13 14-09.3-21 must:
- 14 a. Designate the order as temporary; and
15 b. Identify to the extent feasible, the destination, duration, and conditions of the
16 deployment.
- 17 2. If applicable, an order for custodial responsibility under sections 14-09.3-11 through
18 14-09.3-21 must:
- 19 a. Specify the allocation of caretaking authority, decisionmaking authority, or limited
20 contact among the deploying parent, the other parent, and any nonparent;
21 b. If the order divides caretaking or decisionmaking authority between individuals, or
22 grants caretaking authority to one individual and limited contact to another,
23 provide a process to resolve any dispute that may arise;
24 c. Provide for liberal communication between the deploying parent and the child
25 during deployment, including through electronic means, unless contrary to the
26 best interests of the child, and allocate any costs of communications;
27 d. Provide for liberal contact between the deploying parent and the child during the
28 time the deploying parent is on leave or otherwise available, unless contrary to
29 the best interests of the child;
30 e. Provide for reasonable contact between the deploying parent and the child after
31 return from deployment until the temporary order is terminated, even if the time of

1 contact exceeds the time the deploying parent spent with the child before entry of
2 the temporary order; and

3 f. Provide that the order will terminate pursuant to sections 14-09.3-22 through
4 14-09.3-25 after the deploying parent returns from deployment.

5 **14-09.3-20. (310) Order for child support.**

6 If a court has issued an order granting caretaking authority under sections 14-09.3-11
7 through 14-09.3-21, or an agreement granting caretaking authority has been executed under
8 sections 14-09.3-07 through 14-09.3-10, the court may enter a temporary order for child support
9 consistent with the laws of this state other than this chapter if the court has jurisdiction under
10 chapter 14-12.2.

11 **14-09.3-21. (311) Modifying or terminating grant of custodial responsibility to**
12 **nonparent.**

13 1. Except for an order under section 14-09.3-15, except as otherwise provided in
14 subsection 2, and consistent with the federal Servicemembers Civil Relief Act,
15 [50 U.S.C. appendix sections 521 and 522], on motion of a deploying or other parent
16 or any nonparent to whom caretaking authority, decisionmaking authority, or limited
17 contact has been granted, the court may modify or terminate the grant if the
18 modification or termination is consistent with sections 14-09.3-11 through 14-09.3-21
19 and it is in the best interests of the child. A modification is temporary and terminates
20 pursuant to sections 14-09.3-22 through 14-09.3-25 after the deploying parent returns
21 from deployment, unless the grant has been terminated before that time by court
22 order.

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

24 **14-09.3-22. (401) Procedure for terminating temporary grant of custodial**
25 **responsibility established by agreement.**

26 1. At any time after return from deployment, a temporary agreement granting custodial
27 responsibility under sections 14-09.3-07 through 14-09.3-10 may be terminated by an
28 agreement to terminate signed by the deploying parent and the other parent.
29 2. A temporary agreement under sections 14-09.3-07 through 14-09.3-10 granting
30 custodial responsibility terminates:

- 1 a. If an agreement to terminate under subsection 1 specifies a date for termination,
2 on that date; or
- 3 b. If the agreement to terminate does not specify a date, on the date the agreement
4 to terminate is signed by the deploying parent and the other parent.
- 5 3. In the absence of an agreement under subsection 1 to terminate, a temporary
6 agreement granting custodial responsibility terminates under sections 14-09.3-07
7 through 14-09.3-10 sixty days after the deploying parent gives notice to the other
8 parent that the deploying parent returned from deployment.
- 9 4. If a temporary agreement granting custodial responsibility was filed with a court
10 pursuant to section 14-09.3-10, an agreement to terminate the temporary agreement
11 also must be filed with that court within a reasonable time after the signing of the
12 agreement. The case number and heading of the case concerning custodial
13 responsibility or child support must be provided to the court with the agreement to
14 terminate.

15 **14-09.3-23. (403) Consent procedure for terminating temporary grant of custodial**
16 **responsibility established by court order.**

17 At any time after a deploying parent returns from deployment, the deploying parent and the
18 other parent may file with the court an agreement to terminate a temporary order for custodial
19 responsibility issued under sections 14-09.3-11 through 14-09.3-21. After an agreement has
20 been filed, the court shall issue an order terminating the temporary order effective on the date
21 specified in the agreement. If a date is not specified, the order is effective immediately.

22 **14-09.3-24. (403) Visitation before termination of temporary grant of custodial**
23 **responsibility.**

24 After a deploying parent returns from deployment until a temporary agreement or order for
25 custodial responsibility established under sections 14-09.3-07 through 14-09.3-10 or sections
26 14-09.3-11 through 14-09.3-21 is terminated, the court shall issue a temporary order granting
27 the deploying parent reasonable contact with the child unless it is contrary to the best interests
28 of the child, even if the time of contact exceeds the time the deploying parent spent with the
29 child before deployment.

1 **14-09.3-25. (404) Termination by operation of law of temporary grant of custodial**
2 **responsibility established by court order.**

3 1. If an agreement between the parties to terminate a temporary order for custodial
4 responsibility under sections 14-09.3-11 through 14-09.3-21 has not been filed, the
5 order terminates sixty days after the deploying parent gives notice to the other parent
6 and any nonparent granted custodial responsibility that the deploying parent has
7 returned from deployment.

8 2. A proceeding seeking to prevent termination of a temporary order for custodial
9 responsibility is governed by law of this state other than this chapter.

10 **14-09.3-26. (502) Relation to Electronic Signatures in Global and National Commerce**
11 **Act.**

12 This chapter modifies, limits, and supersedes the Electronic Signatures in Global and
13 National Commerce Act [15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede
14 section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize electronic delivery of any of the
15 notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

16 **SECTION 4. APPLICATION.** Chapter 14-09.3 does not affect the validity of a temporary
17 court order concerning custodial responsibility during deployment which was entered before
18 August 1, 2013.