
Wisconsin Legislative Council

ACT MEMO



Prepared by: Amber Otis, Senior Staff Attorney

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2021 Wisconsin Act 161
[2021 Senate Bill 108]

**Uniform Deployed Parents
Custody and Visitation Act**

BACKGROUND

State law generally prohibits a court from considering, when determining legal custody of a child, whether a service member has been or will be absent from the home for a call to active duty. In a physical placement determination, a court may allocate a service member's physical placement periods to the other parent for the service member's call to active duty, though the court must require immediate reinstatement of the prior physical placement schedule upon the service member's return.

Additionally, state law provides the option for parents to together sign a power of attorney for a temporary delegation of parental powers for the care and custody of a child to another person. However, under prior law, as set forth in *Lubinski v. Lubinski*, 2008 WI App 151, a court had no authority to delegate a service member's allocation of physical placement periods to another person without the other parent's agreement.

2021 WISCONSIN ACT 161

2021 Wisconsin Act 161 maintains the statutory provisions relating to determining or revising a legal custody or physical placement order between the parents, but creates new authority and procedures for temporary arrangements with another person during a parent's deployment. The act is generally modeled after the Uniform Law Commission's Uniform Deployed Parents Custody and Visitation Act. Specifically, the act provides two methods for temporarily delegating custodial responsibilities during deployment: a temporary agreement between the parents; or a temporary court order following certain procedural requirements, including a court hearing.

Applicability and Initiation

The act applies to a service member who is deployed between 30 days and 18 months in accordance with service orders that are designated as unaccompanied, do not authorize dependent travel, or otherwise do not permit movement of a child to the location. As applied in the act, service may include service in: the U.S. armed forces, including any reserve component; the national guard of any state; the merchant marine; the commissioned corps of the U.S. Public Health Service; or the commissioned corps of the National Oceanic and Atmospheric Administration.

If a parent who is a service member receives a deployment order, the parent must provide notice of the deployment to the other parent within seven days or as soon as reasonably possible. As soon as reasonably possible after providing the notice, the parents must provide each other with a plan for fulfilling their respective shares of custodial responsibility during the deployment.

Temporary Agreement

Under a temporary agreement entered into by the parents, custodial responsibilities or visitation during the deployment may be shared with any agreed-upon person. The agreement must identify the specific

arrangements for custodial responsibility or visitation, a process to resolve any dispute that may arise, and arrangements for the deploying parent's contact with the child during the deployment and while on leave. The temporary agreement must be signed by both parents and any other person with whom custodial responsibility is shared, and, if the child is the subject of an underlying action affecting the family, the agreement must be filed with the court that has jurisdiction in that action.

Temporary Court Order

Alternatively, the act creates a procedure for seeking a temporary court order, which is initiated by the deploying parent or other parent filing a motion with the court after notice of deployment, and then the court conducts an expedited hearing on that motion. Unless a proceeding is prohibited by the Service Members Civil Relief Act, the court may grant custodial responsibilities or visitation to a stepparent, grandparent, or great-grandparent, or to an adult who has maintained a parent-like relationship with the child. The court must find the arrangements to be in the child's best interest, using the best-interest factors identified in current state law for legal custody and physical placement determinations, placing particular emphasis on maintaining sibling relationships.

Similar to a temporary agreement, a temporary court order must identify the specific arrangements for custodial responsibility or visitation, a process to resolve disputes, and arrangements for the deploying parent's contact with the child during the deployment and while on leave. If a court issues a temporary order, or a temporary agreement has been filed, a court may enter a temporary order for child support. When a court receives a motion for a temporary delegation of custodial responsibilities during deployment, the court must conduct a hearing within 30 days and must allow a parent or other person to appear by electronic means if the person is not available to personally appear, unless there is good cause to require a personal appearance.

Limitations

Under the act, a delegation of physical placement periods cannot be greater than a child's habitual or court-ordered physical placement with the deploying parent unless otherwise agreed to by the other parent or as needed to account for any unusual travel time. Additionally, a delegation of custodial responsibilities or visitation cannot be granted to a person who was previously denied those rights.

Temporary arrangements under either an agreement or court order terminate based on the following events, as applicable: (1) immediately upon the return of a deploying parent, if the deployment is for less than six months; (2) 30 days after the return of a deploying parent, if the deployment is for six months or more; or (3) on a date specified by agreement or court order. If a parent has acted in bad faith or intentionally failed to comply with a temporary court order or other requirement under the act's provisions, the court may assess reasonable attorney fees and costs or order other appropriate relief.

Request for Forms

The act also requests that the Wisconsin Court Records Management Committee develop a form that parents may use to enter into an agreement, and a form to file a motion with a court, for a temporary delegation of custodial responsibilities for a child during a parent's deployment.

Effective date: The act took effect on March 13, 2022, and applies to deploying parents who receive notice of deployment on or after that date.

AO:jal