

SENATE BILL 10

D4
SB 813/16 – JPR

(PRE-FILED)

7lr0399

By: **Senator Cassilly**

Requested: July 5, 2016

Introduced and read first time: January 11, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Child Custody and Visitation – Deployed Parents**

3 FOR the purpose of prohibiting a court in any child custody or visitation proceeding from
4 considering, in and of itself, a parent's past deployment or possible future
5 deployment in determining the best interest of a child except under certain
6 circumstances; authorizing a party or witness who is subject to deployment to
7 provide testimony and present evidence by electronic means or by telephone under
8 certain circumstances; authorizing the court to grant caretaking or decision-making
9 authority to a certain nonparent under certain circumstances; specifying that the
10 grant of caretaking authority is limited to a certain amount of time except under
11 certain circumstances; requiring the court to specify certain decision-making
12 authority granted to a nonparent; authorizing the parents of a child to enter into a
13 temporary custody agreement during deployment; specifying certain requirements
14 for the agreement; establishing that the omission of certain items from the
15 agreement does not invalidate the agreement; establishing that the agreement
16 terminates after the deploying parent returns from deployment; establishing that
17 the agreement does not create certain independent, continuing rights for certain
18 individuals; establishing that a certain nonparent has standing to enforce the
19 agreement until a certain time; authorizing the parents to modify the agreement by
20 mutual consent; specifying certain requirements for a modification of the agreement;
21 requiring the agreement to be filed within a reasonable time with a certain court;
22 requiring that the case number and heading of any pending case concerning child
23 custody or child support be provided to the court with the agreement; authorizing a
24 court to issue a custody order under this Act under certain circumstances; specifying
25 that the residence of the deploying parent is not changed by reason of the deployment
26 for certain purposes under certain circumstances; specifying that this Act does not
27 prevent a court from exercising temporary emergency jurisdiction under certain
28 other provisions of law; making certain clarifying and conforming changes; altering
29 a certain definition; and generally relating to child custody and visitation and
30 deployed parents.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Family Law
3 Section 9–108
4 Annotated Code of Maryland
5 (2012 Replacement Volume and 2016 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
7 That the Laws of Maryland read as follows:

8 **Article – Family Law**

9 9–108.

10 (a) In this section:

11 (1) “deployment” means compliance with military orders received by a
12 member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National
13 Guard, or any other Reserve component to report for combat operations or other active
14 service **FOR MORE THAN 90 DAYS BUT LESS THAN 18 MONTHS AND** for which the
15 member is required to report unaccompanied by any family member or that is classified by
16 the member’s branch as remote; and

17 (2) “deployment” does not include National Guard or Reserve annual
18 training, inactive duty days, or drill weekends.

19 **(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,**
20 **IN ANY CHILD CUSTODY OR VISITATION PROCEEDING, THE COURT MAY NOT**
21 **CONSIDER, IN AND OF ITSELF, A PARENT’S PAST DEPLOYMENT OR POSSIBLE FUTURE**
22 **DEPLOYMENT IN DETERMINING THE BEST INTEREST OF THE CHILD.**

23 **(2) THE COURT MAY CONSIDER A PARENT’S PAST DEPLOYMENT OR**
24 **POSSIBLE FUTURE DEPLOYMENT IF THE DEPLOYMENT HAS HAD OR WILL HAVE A**
25 **SIGNIFICANT IMPACT ON THE BEST INTEREST OF THE CHILD.**

26 **[(b)] (C)** Any order or modification of an existing child custody or visitation order
27 issued by a court during a term of a deployment of a parent shall specifically reference the
28 deployment of the parent.

29 **[(c)] (D)** (1) A parent who petitions the court for an order or modification of
30 an existing child custody or visitation order after returning from a deployment shall
31 specifically reference the date of the end of the deployment in the petition.

32 (2) (i) If the petition under paragraph (1) of this subsection is filed
33 within 30 days after the end of the deployment of the parent, the court shall set a hearing
34 on the petition on an expedited basis.

1 (ii) If the court finds that extenuating circumstances prohibited the
2 filing of the petition within 30 days after the end of the deployment of the parent, the court
3 may set a hearing on the petition on an expedited basis whenever the petition is filed.

4 (E) A PARTY OR WITNESS WHO IS SUBJECT TO DEPLOYMENT AND IS NOT
5 REASONABLY AVAILABLE TO APPEAR IN PERSON BEFORE THE COURT IN A CHILD
6 CUSTODY OR VISITATION PROCEEDING MAY PROVIDE TESTIMONY AND PRESENT
7 EVIDENCE BY ELECTRONIC MEANS OR BY TELEPHONE.

8 (F) (1) ON MOTION OF A DEPLOYING PARENT, THE COURT MAY GRANT
9 CARETAKING AUTHORITY TO A NONPARENT WHO IS AN ADULT FAMILY MEMBER OF
10 THE CHILD OR AN ADULT WITH WHOM THE CHILD HAS A CLOSE AND SUBSTANTIAL
11 RELATIONSHIP IF THE COURT FINDS:

12 (I) THAT EXCEPTIONAL CIRCUMSTANCES EXIST; AND

13 (II) THE GRANT OF CARETAKING AUTHORITY IS IN THE BEST
14 INTEREST OF THE CHILD.

15 (2) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II)
16 OF THIS PARAGRAPH, UNLESS THE GRANT OF CARETAKING AUTHORITY TO A
17 NONPARENT UNDER PARAGRAPH (1) OF THIS SUBSECTION IS AGREED TO BY THE
18 OTHER PARENT, THE GRANT OF CARETAKING AUTHORITY IS LIMITED TO AN AMOUNT
19 OF TIME NOT GREATER THAN:

20 1. THE AMOUNT OF TIME GRANTED TO THE DEPLOYING
21 PARENT UNDER A PERMANENT CUSTODY ORDER CURRENTLY IN EFFECT; OR

22 2. IN THE ABSENCE OF A PERMANENT CUSTODY ORDER
23 CURRENTLY IN EFFECT, THE AMOUNT OF TIME THAT THE DEPLOYING PARENT
24 HABITUALLY CARED FOR THE CHILD BEFORE BEING NOTIFIED OF DEPLOYMENT.

25 (II) THE COURT MAY ADD ANY UNUSUAL TRAVEL TIME
26 NECESSARY TO TRANSPORT THE CHILD TO THE AMOUNT OF TIME GRANTED TO A
27 NONPARENT UNDER THIS PARAGRAPH.

28 (3) (I) ON MOTION OF A DEPLOYING PARENT, THE COURT MAY
29 GRANT DECISION-MAKING AUTHORITY TO A NONPARENT WHO IS AN ADULT FAMILY
30 MEMBER OF THE CHILD OR AN ADULT WITH WHOM THE CHILD HAS A CLOSE AND
31 SUBSTANTIAL RELATIONSHIP IF THE COURT FINDS:

32 1. THAT EXCEPTIONAL CIRCUMSTANCES EXIST;

1 **2. THAT THE DEPLOYING PARENT IS UNABLE TO**
2 **EXERCISE THAT PARENT’S DECISION-MAKING AUTHORITY WITH REGARD TO THE**
3 **CHILD; AND**

4 **3. THE GRANT OF DECISION-MAKING AUTHORITY IS IN**
5 **THE BEST INTEREST OF THE CHILD.**

6 **(II) IF THE COURT GRANTS DECISION-MAKING AUTHORITY TO A**
7 **NONPARENT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COURT SHALL**
8 **SPECIFY THE DECISION-MAKING AUTHORITY GRANTED, INCLUDING DECISIONS**
9 **REGARDING THE CHILD’S EDUCATION, RELIGIOUS TRAINING, HEALTH CARE,**
10 **EXTRACURRICULAR ACTIVITIES, AND TRAVEL.**

11 **[(d)] (G)** Any custody or visitation order issued based on the deployment of a
12 parent shall require that:

13 (1) the other parent reasonably accommodate the leave schedule of the
14 **DEPLOYING** parent [who is subject to the deployment];

15 (2) the other parent facilitate opportunities for telephone and electronic
16 [mail contact] **COMMUNICATION** between the **DEPLOYING** parent [who is subject to the
17 deployment] and the child during the period of deployment; and

18 (3) the **DEPLOYING** parent [who is subject to the deployment] provide
19 timely information regarding the parent’s leave schedule to the other parent.

20 **(H) (1) THE PARENTS MAY ENTER INTO A TEMPORARY CUSTODY**
21 **AGREEMENT DURING DEPLOYMENT.**

22 **(2) (I) AN AGREEMENT UNDER THIS SUBSECTION SHALL BE IN**
23 **WRITING AND SIGNED BY THE PARTIES.**

24 **(II) IF FEASIBLE, AN AGREEMENT UNDER THIS SUBSECTION**
25 **SHALL:**

26 **1. IDENTIFY THE DESTINATION, DURATION, AND**
27 **CONDITIONS OF THE DEPLOYMENT;**

28 **2. SPECIFY THE ALLOCATION OF CARETAKING**
29 **AUTHORITY AMONG THE DEPLOYING PARENT, THE OTHER PARENT, AND ANY**
30 **NONPARENT;**

31 **3. SPECIFY ANY DECISION-MAKING AUTHORITY THAT**
32 **ACCOMPANIES A GRANT OF CARETAKING AUTHORITY;**

1 4. SPECIFY ANY GRANT OF LIMITED CONTACT TO A
2 NONPARENT;

3 5. IF UNDER THE AGREEMENT CUSTODIAL
4 RESPONSIBILITY IS SHARED BY THE OTHER PARENT AND A NONPARENT OR BY
5 OTHER NONPARENTS, PROVIDE A PROCESS TO RESOLVE ANY DISPUTE THAT MAY
6 ARISE;

7 6. SPECIFY THE FREQUENCY, DURATION, AND MEANS,
8 INCLUDING ELECTRONIC MEANS, BY WHICH THE DEPLOYING PARENT WILL HAVE
9 CONTACT WITH THE CHILD, ANY PARTICIPATION BY THE OTHER PARENT IN
10 FACILITATING THE CONTACT, AND THE ALLOCATION OF ANY COSTS OF CONTACT;

11 7. SPECIFY THE CONTACT BETWEEN THE DEPLOYING
12 PARENT AND THE CHILD DURING THE TIME THE DEPLOYING PARENT IS ON LEAVE
13 OR IS OTHERWISE AVAILABLE;

14 8. ACKNOWLEDGE THAT ANY PARTY'S CHILD SUPPORT
15 OBLIGATION CANNOT BE MODIFIED BY THE AGREEMENT AND THAT CHANGING THE
16 TERMS OF THE OBLIGATION DURING DEPLOYMENT REQUIRES MODIFICATION IN
17 THE APPROPRIATE COURT; AND

18 9. PROVIDE THAT THE AGREEMENT WILL TERMINATE
19 AFTER THE DEPLOYING PARENT RETURNS FROM DEPLOYMENT.

20 (III) THE OMISSION OF ANY OF THE ITEMS SPECIFIED IN
21 SUBPARAGRAPH (II) OF THIS PARAGRAPH DOES NOT INVALIDATE AN AGREEMENT
22 UNDER THIS PARAGRAPH.

23 (3) (I) UNLESS TERMINATED EARLIER BY COURT ORDER OR BY
24 MODIFICATION UNDER PARAGRAPH (4) OF THIS SUBSECTION, AN AGREEMENT
25 UNDER THIS SUBSECTION IS TEMPORARY AND TERMINATES AFTER THE DEPLOYING
26 PARENT RETURNS FROM DEPLOYMENT.

27 (II) THE AGREEMENT DOES NOT CREATE AN INDEPENDENT,
28 CONTINUING RIGHT TO CARETAKING AUTHORITY, DECISION-MAKING AUTHORITY,
29 OR LIMITED CONTACT FOR AN INDIVIDUAL TO WHOM CUSTODIAL RESPONSIBILITY
30 IS GIVEN.

31 (III) A NONPARENT WHO HAS CARETAKING AUTHORITY,
32 DECISION-MAKING AUTHORITY, OR LIMITED CONTACT UNDER AN AGREEMENT
33 UNDER THIS SUBSECTION HAS STANDING TO ENFORCE THE AGREEMENT UNTIL THE

1 AGREEMENT HAS BEEN TERMINATED BY MODIFICATION UNDER PARAGRAPH (4) OF
2 THIS SUBSECTION.

3 (4) (I) BY MUTUAL CONSENT, THE PARENTS OF A CHILD MAY
4 MODIFY AN AGREEMENT UNDER THIS SUBSECTION.

5 (II) IF AN AGREEMENT IS MODIFIED BEFORE THE DEPLOYMENT
6 OF A DEPLOYING PARENT, THE MODIFICATION SHALL BE IN WRITING AND SIGNED
7 BY BOTH PARENTS AND ANY NONPARENT WHO WILL EXERCISE CUSTODIAL
8 RESPONSIBILITY UNDER THE MODIFIED AGREEMENT.

9 (III) IF AN AGREEMENT IS MODIFIED DURING THE DEPLOYMENT
10 OF A DEPLOYING PARENT, THE MODIFICATION SHALL BE AGREED ON IN A RECORD
11 BY BOTH PARENTS AND ANY NONPARENT WHO WILL EXERCISE CUSTODIAL
12 RESPONSIBILITY UNDER THE MODIFIED AGREEMENT.

13 (5) (I) AN AGREEMENT UNDER THIS SUBSECTION SHALL BE FILED
14 WITHIN A REASONABLE TIME WITH ANY COURT THAT HAS ISSUED A CHILD CUSTODY
15 OR CHILD SUPPORT ORDER CURRENTLY IN EFFECT CONCERNING THE CHILD WHO
16 IS THE SUBJECT OF THE AGREEMENT.

17 (II) THE CASE NUMBER AND HEADING OF ANY PENDING CASE
18 CONCERNING CHILD CUSTODY OR CHILD SUPPORT SHALL BE PROVIDED TO THE
19 COURT WITH THE AGREEMENT.

20 (I) (1) A COURT MAY ISSUE A CUSTODY ORDER UNDER THIS SECTION
21 ONLY IF THE COURT HAS JURISDICTION UNDER THE UNIFORM CHILD CUSTODY
22 JURISDICTION AND ENFORCEMENT ACT.

23 (2) IF A COURT HAS ISSUED A TEMPORARY CUSTODY ORDER, THE
24 RESIDENCE OF THE DEPLOYING PARENT IS NOT CHANGED BY REASON OF THE
25 DEPLOYMENT FOR PURPOSES OF THE UNIFORM CHILD CUSTODY JURISDICTION
26 AND ENFORCEMENT ACT.

27 (3) IF A COURT HAS ISSUED A PERMANENT CUSTODY ORDER BEFORE
28 NOTICE OF DEPLOYMENT AND THE PARENTS MODIFY THAT ORDER TEMPORARILY
29 BY AGREEMENT, THE RESIDENCE OF THE DEPLOYING PARENT IS NOT CHANGED BY
30 REASON OF THE DEPLOYMENT FOR PURPOSES OF THE UNIFORM CHILD CUSTODY
31 JURISDICTION AND ENFORCEMENT ACT.

32 (4) IF A COURT IN ANOTHER STATE HAS ISSUED A TEMPORARY
33 CUSTODY ORDER AS A RESULT OF IMPENDING OR CURRENT DEPLOYMENT, THE
34 RESIDENCE OF THE DEPLOYING PARENT IS NOT CHANGED BY REASON OF THE

1 DEPLOYMENT FOR PURPOSES OF THE UNIFORM CHILD CUSTODY JURISDICTION
2 AND ENFORCEMENT ACT.

3 (5) THIS SUBSECTION DOES NOT PREVENT A COURT FROM
4 EXERCISING TEMPORARY EMERGENCY JURISDICTION UNDER THE UNIFORM CHILD
5 CUSTODY JURISDICTION AND ENFORCEMENT ACT.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2017.