

# 2012 -- H 7274 SUBSTITUTE A

=====  
LC00821/SUB A/2  
=====

## STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

—————  
A N A C T

RELATING TO DOMESTIC RELATIONS - UNIFORM CHILD CUSTODY JURISDICTION  
AND ENFORCEMENT

Introduced By: Representatives Gallison, Martin, Azzinaro, Messier, and Naughton

Date Introduced: January 26, 2012

Referred To: House Veterans` Affairs

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 15-14.1 of the General Laws entitled "Uniform Child Custody  
2 Jurisdiction and Enforcement Act" is hereby amended by adding thereto the following sections:

3 **15-14.1-43. Custody and visitation upon military temporary duty, deployment or**  
4 **mobilization. -- (a) Purpose. – It is the purpose of this section to provide a means by which to**  
5 **facilitate a fair, efficient, and swift process to resolve matters regarding custody and visitation**  
6 **when a parent receives temporary duty, deployment, or mobilization orders from the military.**

7 **(b) Definitions. – As used in this chapter, the following words and phrases shall have the**  
8 **following meanings unless the context shall indicate another or different meaning or intent:**

9 **(1) “Deployment” means the temporary transfer of a service member serving in an active-**  
10 **duty status to another location in support of combat or some other military operation.**

11 **(2) “Mobilization” means the call-up of a National Guard or Reserve service member to**  
12 **extended active duty status. For purposes of this definition, “mobilization” does not include**  
13 **National Guard or Reserve annual training.**

14 **(3) “Temporary duty” means the transfer of a service member from one military base to a**  
15 **different location, usually another base, for a limited period of time to accomplish training or to**  
16 **assist in the performance of a noncombat mission.**

17 **(c) Custody. – When a parent who has custody, or has joint custody with primary**  
18 **physical custody, receives temporary duty, deployment, or mobilization orders from the military**

1 that involve moving a substantial distance from the parent's residence or otherwise have a  
2 material effect on the parent's ability to exercise custody responsibilities:

3 (1) Any temporary custody order for the child during the parent's absence shall end no  
4 later than ten (10) days after the parent returns, but shall not impair the discretion of the court to  
5 conduct a hearing for emergency custody upon return of the parent and within ten (10) days of the  
6 filing of a verified motion for emergency custody alleging an immediate danger of irreparable  
7 harm to the child; and

8 (2) Exclusion of military service from determination of the child's best interest. The  
9 temporary duty, mobilization, or deployment and the temporary disruption to the child's schedule  
10 shall not be a factor in a determination of change of circumstances if a motion is filed to transfer  
11 custody from the service member.

12 (d) Visitation. – If the parent with visitation rights receives military temporary duty,  
13 deployment, or mobilization orders that involve moving a substantial distance from the parent's  
14 residence or otherwise have a material effect on the parent's ability to exercise visitation rights,  
15 the court may delegate the parent's visitation rights, or a portion thereof, to a family member with  
16 a close and substantial relationship to the minor child for the duration of the parent's absence, if  
17 delegating visitation rights is in the child's best interest.

18 (e) Expedited Hearings. – Upon motion of a parent who has received military temporary  
19 duty, deployment, or mobilization orders, the court shall, for good cause shown, hold an  
20 expedited hearing in custody and visitation matters instituted under this section when the military  
21 duties of the parent have a material effect on the parent's ability, or anticipated ability, to appear  
22 in person at a regularly scheduled hearing.

23 (f) Electronic Communications. – Upon motion of a parent who has received military  
24 temporary duty, deployment, or mobilization orders, the court shall, upon reasonable advance  
25 notice and for good cause shown, allow the parent to present testimony and evidence by  
26 electronic means in custody and visitation matters instituted under this section when the military  
27 duties of the parent have a material effect on the parent's ability to appear in person at a regularly  
28 scheduled hearing. The phrase "electronic means" includes communication by telephone, video  
29 teleconference, or the Internet.

30 (g) Nothing in this section shall alter the duty of the court to consider "the best interest of  
31 the child" in deciding custody or visitation matters.

32 **15-14.1-44. Final order, modification. --** (a) If a deploying parent is required to be  
33 separated from a child, a court shall not enter a final order modifying parental rights and  
34 responsibilities and parent-child contact in an existing order until ninety (90) days after the

1 deployment ends, unless such modification is agreed to by the deploying parent.

2 (b) Absence created by deployment or mobilization or the potential for future deployment  
3 or mobilization shall not be the sole factor supporting a real, substantial, and unanticipated  
4 change in circumstances pursuant to subsection 15-14.1-43(c)(2) of this title or grounds sufficient  
5 to support a permanent modification of the parental rights and responsibilities or parent-child  
6 contact established in an existing order.

7 **15-14.1-45. Temporary modification.** -- (a) Upon motion of a deploying or non-  
8 deploying parent, the court shall enter a temporary order modifying parental rights and  
9 responsibilities or parent-child contact during the period of deployment or mobilization when:

10 (1) A military parent who has shared, soled, or primary legal or physical parental rights  
11 and responsibilities for a child or who has parent-child contact pursuant to an existing court order  
12 has received notice from military leadership that he or she will deploy or mobilize in the near  
13 future; and

14 (2) The deployment or mobilization would have a material effect upon his or her ability  
15 to exercise such parental rights and responsibilities or parent-child contact.

16 (b) Motions for modification because of deployment shall be heard by the court as  
17 expeditiously as possible, and shall be a priority for this purpose.

18 (c)(1) All temporary orders shall set a date certain for the end of deployment and the start  
19 of the transition period. If deployment is extended, the temporary order shall remain in effect  
20 during the extended deployment, and the transition schedule shall take effect at the end of the  
21 extended deployment. In that case, the non-deployed parent shall notify the court in accordance  
22 with this subdivision which notice shall not prejudice the deployed parent's right to return to the  
23 prior order once the temporary order expires as provided in subdivision (2) of this section.

24 (2) The temporary order shall expire upon the completion of the transition, and the prior  
25 order for parental rights and responsibilities and parent-child contact shall be in effect.

26 (d) Upon motion of the deploying parent, the court may delegate his or her parent-child  
27 contact rights, or a portion of them, to a family member, a person with whom the deploying  
28 parent cohabits, or another person with a close and substantial relationship to the minor child or  
29 children for the duration of the deployment, upon a finding that it is in the child's best interest.  
30 Such delegated contact does not create separate right to parent-child contact for a person other  
31 than a parent once the temporary order is no longer in effect.

32 (e) A temporary modification order issued pursuant to this section shall designate the  
33 deploying parent's parental rights and responsibilities for a parent-child contact with a child  
34 during a period of leave granted to the deploying parent, in the best interest of the child.

1 (f) A temporary order issued under this section may require any of the following if the  
2 court finds that it is in the best interest of the child:

3 (1) The non-deploying parent shall make the child reasonably available to the deploying  
4 parent when the deploying parent has leave.

5 (2) The non-deploying parent shall facilitate opportunities for telephonic, electronic mail,  
6 and other such contact between the deploying parent and the child during deployment.

7 (3) The deploying parent shall provide timely information regarding his or her leave  
8 schedule to the non-deploying parent. Actual leave dates are subject to change with little notice  
9 due to military necessity and shall not be used by the non-deploying parent to prevent parent-  
10 child contact.

11 (g) A court order modifying a previous order for parental rights and responsibilities or  
12 parent-child contact because of deployment shall specify that the deployment is basis for the  
13 order, and it shall be entered by the court as a temporary order. The order shall further require the  
14 non-deploying parent to provide the court and the deploying parent with thirty (30) days advance  
15 written notice of any change of address and any change of telephone number.

16 **15-14.1-46. Emergency motion to modify permanent modification.** – (a) Upon the  
17 return of the deploying parent, either parent may file a motion to modify the temporary order on  
18 the grounds that compliance with the order will result in immediate danger of irreparable harm to  
19 the child, and may request that the court issue an ex parte order. The deploying parent may file  
20 such a motion prior to his or her return. The motion shall be accompanied by an affidavit in  
21 support of the requested order. Upon a finding of irreparable harm based on the facts set forth in  
22 the affidavit, the court may issue an ex parte order modifying parental rights and responsibilities  
23 and parent-child contact. If the court issues an ex parte order, the court shall set the matter for  
24 hearing within ten (10) days from the issuance of the order.

25 (b) Nothing in this chapter shall preclude the court from hearing a motion for permanent  
26 modification of parental rights and responsibilities or parent-child contact prior to, or upon return  
27 of the deploying parent. The moving party shall bear the burden of showing a real, substantial,  
28 and unanticipated change in circumstances and that resumption of the parental rights and  
29 responsibilities or parent-child order in effect before deployment is no longer in the child's best  
30 interests. The absence created by deployment or mobilization and any resulting temporary  
31 disruption to the child shall not be considered the sole factors in determining whether there has  
32 been a real, substantial, and unanticipated change of circumstances in regard to the motion to  
33 modify.

34 **15-14.1-47. Testimony and evidence.** -- Upon motion of a deploying parent, provided

1 reasonable advance notice is given and good cause shown, the court shall allow such parent to  
2 present testimony and evidence by electronic means with respect to parental rights and  
3 responsibilities or parent-child contact matters instituted under this section when the deployment  
4 of that person has a material effect on his or her ability to appear in person at a regularly  
5 scheduled hearing. The phrase “electronic means” includes communication by telephone or video  
6 teleconference.

7 **15-14.1-48. No existing order.** -- If there is no existing order establishing the terms of  
8 parental rights and responsibilities or parent-child contact and it appears that deployment or  
9 mobilization is imminent, upon motion by either parent, the court shall expedite a hearing to  
10 establish temporary parental rights and responsibilities and parent-child contact to ensure the  
11 deploying parent has access to the child, to ensure disclosure of information, to grant other rights  
12 and duties set forth herein, and to provide other appropriate relief. Any initial pleading filed to  
13 establish parental rights and responsibilities for or parent-child contact with a child of a deploying  
14 parent shall be so identified at the time of filing by stating in text of the pleading the specific facts  
15 related to deployment.

16 **15-14.1-49. Duty to cooperate and disclose information.** -- (a) Because military  
17 necessity may preclude court adjudication before deployment, the parties shall cooperate with  
18 each other in an effort to reach a mutually agreeable resolution of parental rights and  
19 responsibilities, parent-child contact, and child support. Each party shall provide information to  
20 one another in an effort to facilitate agreement on these issues.

21 (b) Within fourteen (14) days of receiving notification of deployment or mobilization in  
22 the near future from his or her military leadership, the military parent shall provide written notice  
23 to the non-deploying parent of the same. If less than fourteen (14) days notice is received by the  
24 military parent then notice must be given immediately upon receipt of notice to the non-deploying  
25 parent.

26 **15-14.1-50. Failure to exercise parent-child contact rights.** -- In determining whether a  
27 parent has failed to exercise parent-child contact, the court shall not count any time periods  
28 during which the parent did not exercise such contact due to the material effect of the parent’s  
29 military duties on the contact schedule.

30 SECTION 2. Section 15-5-16 of the General Laws in Chapter 15-5 entitled "Divorce and  
31 Separation" is hereby amended to read as follows:

32 **15-5-16. Alimony and counsel fees -- Custody of children.** -- (a) In granting any  
33 petition for divorce, divorce from bed and board, or relief without the commencement of divorce  
34 proceedings, the family court may order either of the parties to pay alimony or counsel fees, or

1 both, to the other.

2 (b) (1) In determining the amount of alimony or counsel fees, if any, to be paid, the  
3 court, after hearing the witnesses, if any, of each party, shall consider:

4 (i) The length of the marriage;

5 (ii) The conduct of the parties during the marriage;

6 (iii) The health, age, station, occupation, amount and source of income, vocational skills,  
7 and employability of the parties; and

8 (iv) The state and the liabilities and needs of each of the parties.

9 (2) In addition, the court shall consider:

10 (i) The extent to which either party is unable to support herself or himself adequately  
11 because that party is the primary physical custodian of a child whose age, condition, or  
12 circumstances make it appropriate that the parent not seek employment outside the home, or seek  
13 only part-time or flexible-hour employment outside the home;

14 (ii) The extent to which either party is unable to support herself or himself adequately  
15 with consideration given to:

16 (A) The extent to which a party was absent from employment while fulfilling  
17 homemaking responsibilities, and the extent to which any education, skills, or experience of that  
18 party have become outmoded and his or her earning capacity diminished;

19 (B) The time and expense required for the supported spouse to acquire the appropriate  
20 education or training to develop marketable skills and find appropriate employment;

21 (C) The probability, given a party's age and skills, of completing education or training  
22 and becoming self-supporting;

23 (D) The standard of living during the marriage;

24 (E) The opportunity of either party for future acquisition of capital assets and income;

25 (F) The ability to pay of the supporting spouse, taking into account the supporting  
26 spouse's earning capacity, earned and unearned income, assets, debts, and standard of living;

27 (G) Any other factor which the court expressly finds to be just and proper.

28 (c) (1) For the purposes of this section, "alimony" is construed as payments for the  
29 support or maintenance of either the husband or the wife.

30 (2) Alimony is designed to provide support for a spouse for a reasonable length of time  
31 to enable the recipient to become financially independent and self-sufficient. However, the court  
32 may award alimony for an indefinite period of time when it is appropriate in the discretion of the  
33 court based upon the factors set forth in subdivision (b)(2)(ii)(B). After a decree for alimony has  
34 been entered, the court may from time to time upon the petition of either party review and alter its

1 decree relative to the amount and payment of the alimony, and may make any decree relative to it  
2 which it might have made in the original suit. The decree may be made retroactive in the court's  
3 discretion to the date that the court finds that a substantial change in circumstances has occurred;  
4 provided, the court shall set forth in its decision the specific findings of fact which show a  
5 substantial change in circumstances and upon which findings of facts the court has decided to  
6 make the decree retroactive. Nothing provided in this section shall affect the power of the court as  
7 subsequently provided by law to alter, amend, or annul any order of alimony previously entered.  
8 Upon the remarriage of the spouse who is receiving alimony, the obligation to pay alimony shall  
9 automatically terminate at once.

10 (d) (1) In regulating the custody of the children, the court shall provide for the  
11 reasonable right of visitation by the natural parent not having custody of the children, except upon  
12 the showing of cause why the right should not be granted. The court shall mandate compliance  
13 with its order by both the custodial parent and the children. In the event of noncompliance, the  
14 noncustodial parent may file a motion for contempt in family court. Upon a finding by the court  
15 that its order for visitation has not been complied with, the court shall exercise its discretion in  
16 providing a remedy, and define the noncustodial parent's visitation in detail. However, if a second  
17 finding of noncompliance by the court is made, the court shall consider this to be grounds for a  
18 change of custody to the noncustodial parent.

19 (2) In regulating the custody and determining the best interests of children, the fact that a  
20 parent is receiving public assistance shall not be a factor in awarding custody.

21 (3) A judicial determination that the child has been physically or sexually abused by the  
22 natural parent shall constitute sufficient cause to deny the right of visitation. However, when the  
23 court enters an order denying visitation under this section, it shall review the case at least  
24 annually to determine what, if any, action the parent has taken to rehabilitate himself or herself  
25 and whether the denial of visitation continues to be in the child's best interests.

26 (4) The court may order a natural parent who has been denied the right of visitation due  
27 to physical or sexual abuse of his or her child to engage in counseling. The failure of the parent to  
28 engage in counseling, ordered by the court pursuant to this section, shall constitute sufficient  
29 cause to deny visitation.

30 (e) In all hearings regarding denial of visitation, the court shall make findings of fact.

31 (f) This chapter does not affect the right of the family court to award alimony or support  
32 pendente lite.

33 (g) (1) Notwithstanding the provisions of this section and section 15-5-19, the court,  
34 when making decisions regarding child custody and visitation, shall consider evidence of past or

1 present domestic violence. Where domestic violence is proven, any grant of visitation shall be  
2 arranged so as to best protect the child and the abused parent from further harm.

3 (2) In addition to other factors that a court must consider in a proceeding in which the  
4 court has made a finding of domestic or family violence, the court shall consider as primary the  
5 safety and well-being of the child and of the parent who is the victim of domestic or family  
6 violence. The court shall also consider the perpetrator's history of causing physical harm, bodily  
7 injury or assault to another person.

8 (3) In a visitation or custody order, as a condition of the order, the court may:

9 (i) Order the perpetrator of domestic violence to attend and successfully complete, to the  
10 satisfaction of the court, a certified batterer's intervention program;

11 (ii) Order the perpetrator to attend a substance abuse program whenever deemed  
12 appropriate;

13 (iii) Require that a bond be filed with the court in order to ensure the return and safety of  
14 the child;

15 (iv) Order that the address and telephone number of the child be kept confidential;

16 (v) Order an exchange of the child to occur in a protected setting, or supervised by  
17 another person or agency; provided that, if the court allows a family or household member to  
18 supervise visitation, the court shall establish conditions to be followed during visitation;

19 (vi) Order the perpetrator of domestic violence to abstain from possession or  
20 consumption of alcohol or controlled substances during the visitation; and

21 (vii) Impose any other condition that is deemed necessary to provide for the safety of the  
22 child, the victim of domestic violence, or other family or household member.

23 (4) "Domestic violence" means the occurrence of one or more of the following acts  
24 between spouses or people who have a child in common:

25 (i) Attempting to cause or causing physical harm;

26 (ii) Placing another in fear of imminent serious physical harm;

27 (iii) Causing another to engage involuntarily in sexual relations by force, threat of force,  
28 or duress.

29 (5) In every proceeding in which there is at issue the modification of an order for  
30 custody or visitation of a child, the finding that domestic or family violence has occurred since  
31 the last custody determination constitutes a prima facie finding of a change of circumstances.

32 (6) The fact that a parent is absent or relocates because of an act of domestic or family  
33 violence by the other parent shall not weigh against the relocating or absent parent in determining  
34 custody and visitation.



1 (7) A party's absence, relocation, or failure to comply with custody and visitation orders  
2 shall not, by itself, be sufficient to justify a modification of a custody or visitation order if the  
3 reason for the absence, relocation, or failure to comply is the party's activation to military service  
4 or deployment out of state.

5 If there is no existing order establishing the terms of parental rights and responsibilities or  
6 parent-child contact and it appears that deployment or mobilization is imminent, upon motion by  
7 either parent, the court shall expedite a hearing to establish temporary parental rights and  
8 responsibilities and parent-child contact to ensure the deploying parent has access to the child, to  
9 ensure disclosure of information, to grant other rights and duties set forth herein, and to provide  
10 other appropriate relief. Any initial pleading filed to establish parental rights and responsibilities  
11 for or parent-child contact with a child of a deploying parent shall be so identified at the time of  
12 filing by stating in the text of the pleading the specific facts related to deployment.

13 SECTION 3. This act shall take effect upon passage.

=====  
LC00821/SUB A/2  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO DOMESTIC RELATIONS - UNIFORM CHILD CUSTODY JURISDICTION  
AND ENFORCEMENT

\*\*\*

1           This act would require that if there are no existing orders establishing parental rights and  
2 deployment or mobilization is imminent, upon motion, the court would expedite a hearing to  
3 ensure the deployed parent has access to the child and would require that the initial pleading state  
4 the facts related to deployment.

5           This act would take effect upon passage.

=====  
LC00821/SUB A/2  
=====