REPORT TO THE

SENATE ARMED SERVICES COMMITTEE
HOUSE ARMED SERVICES COMMITTEE

FROM THE DEPARTMENT OF DEFENSE

REPORT ON CHILD CUSTODY LITIGATION
INVOLVING SERVICE OF MEMBERS OF THE ARMED FORCES

RESPONDING TO SECTION 572, PUBLIC LAW 111-84
(NATIONAL DEFENSE AUTHORIZATION ACT – FY 2010)
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1. Introduction.

a. Unique nature of child custody litigation between parents.

No civil litigation is more complicated or contentious than child custody disputes, especially post-divorce actions in which one parent seeks a change of physical custody of a minor child based on a “change of circumstance.” There are countless reasons for this, but the most obvious are:

(1) Awards of child custody are never truly “final.” Despite the apparent finality of a judgment awarding custody to one parent (or naming one parent as the primary domiciliary custodian of a child), a new action seeking change of custody can be filed by the non-custodial parent anytime he or she can allege a “change of circumstance.”

(2) Awards of child custody involve minor children, often of tender years. Regardless of the merits of any child custody case, the family court is going to have to provide for someone to feed, clothe, and house the child.¹

(3) Of primary importance is the standard by which virtually every family court judge is going to rule: what serves the best interest of the child/children – not the litigants, but the children, whom the courts and the custody laws of the State in which the litigation is proceeding are obliged to protect.

The members of the Armed Forces are not immune from the vicissitudes, expense, and distractions of family law litigation, including sometimes bitter child custody dispute – both at the time of the initial award of custody and thereafter if one party seeks a change of custody based on an alleged change in circumstances.

Approximately 142,000 members of the Armed Forces (active, Guard, and Reserve) are single custodians of minor children. Additionally, a number of servicemembers have re-married and reside in a household comprised of one biological parent and his or her new spouse. Most complex of all the situations, perhaps, are those in which a single servicemember has physical custody of a child without ever having obtained an order of custody from any court. When any of these custodial-servicemember parents deploy, attend military training, or attend a service-mandated school, the question arises: “Who takes care of the children while I’m gone?” Someone has to answer that question, and often, it is a state court family law judge.

In any child custody case, while the ultimate issue for determination will always be the best interest of the child, military members who are custodians of minor children should not be penalized in a determination of "best interest of the child" or "change of circumstance" because their military duties may require them to temporarily relinquish custody during absences

¹ Pursuant to the holding in Traxel v. Granville, 530 U.S. 57 (2000), a fit parent has a Constitutional right to make decisions concerning his or her child. Therefore, in the vast majority of cases (and absent some showing of exceptional circumstances or unfitness), a temporary award of custody while the servicemember is deployed will normally be made to the other natural parent of the child.
pursuant to military orders. Unlike those in civilian occupations, when a servicemember is ordered to deploy or perform temporary duty away from his or her home station, he or she must obey the order or face potential criminal sanctions for disobedience. The absence due to temporary duty, mobilization, or deployment in and of itself should not constitute a change of circumstance that would justify a permanent (as opposed to a temporary) change of custody. Although the Department of Defense recognizes that the states are in the best position to balance the potentially competing interests of child and servicemember, no court or judge when deciding custody or visitation should show a bias for a non-deploying parent or a prejudice against a military parent solely because military service may require the military parent to be temporarily away from the child.

b. Scope of research and analysis conducted to prepare interim report.

(1) Review and analysis of reported cases.

Attorneys generally research case law by reading reported decisions published by one of the various research services that serve the legal profession, such as Westlaw and LEXIS-NEXIS. Those services allow Boolean and natural language search terms to be entered to produce a list of responsive cases in which the search terms are found. In recent years, all Federal cases (district and appellate) can be accessed through the Internet via PACER (Public Access to Court Electronic Records), which allows viewing of all pleadings, including orders of the court and opinions, from every Federal court in the country. However, there is no search function within PACER, meaning it can be used to access a case if the parties’ names or the case number is known, but it cannot, for example, be used to search for, “child custody cases involving military parents.” Moreover, Federal case law provides virtually no examples of child custody litigation except for the rare international child abduction cases that are heard in Federal court as a result of a treaty to which the United States is a signatory.

Few states have any type of accessible repository for trial court decisions. Exceptions to that general rule are found in Connecticut, Delaware, New Jersey, New York and Pennsylvania. For New Jersey cases, there is an excellent Internet-based database maintained by Rutgers University Law School at Camden, New Jersey, in which that state’s trial court and appellate court written decisions back to 1994 can be accessed. The Rutgers database includes a search engine that allows word searches for specific terms. Even if published, the decisions of trial courts, however, generally have little or no precedential value outside the district or division where entered.

The research conducted for this Report was gathered primarily using the computer-based commercial legal research system known as Westlaw, with some use of LEXIS-NEXIS. An inescapable drawback to any research using either Westlaw or LEXIS-NEXIS is that the decisions of State trial courts are generally not reported in any readily accessible format, and it is in trial courts that contested child custody cases are litigated. Furthermore, the vast majority of child custody disputes are settled short of trial (which usually results in no written opinion by the judge but merely a judgment awarding custody based on the agreement of the parties). In those few cases that are tried, the courts only infrequently render written opinions stating why one parent was favored over another. Even fewer child custody disputes are appealed (the sine qua
non for a case becoming the subject of reported appellate decisions), because of cost and because at some point, the parties simply tire and decide to accept what the trial court has ordered. The actual percentage of child custody cases that eventually are heard by appellate courts is a miniscule fraction of the total number of child custody determinations that are made by the family courts operating in the 50 states and the territories. 2

(2) Survey of NCJFCJ judges and court personnel.

In an effort to ascertain whether or not members of the Armed Forces were losing custody of their children solely as a result of deployment or the threat of deployment, a survey was taken by members of the National Council of Juvenile and Family Court Judges (NCJFCJ). A total of 165 members of NCJFCJ responded, representing 113 judges, along with psychologists, attorneys, social workers, child custody evaluators, mediators, and court administrators. Interviews with selected judges who responded to that survey are summarized below in Section 2.a.

(3) Army Center for Army Lessons Learned (CALL) and USAF/JAO (International and Operations Law Division of the Office of the Judge Advocate General) responses and interviews with deployed unit commanders.

Requests for relevant input were made to the CALL at Ft. Leavenworth, Kansas, and to the International and Operations Law Division of the Air Force Office of the Judge Advocate General. Additionally, interviews were conducted with former commanders of deployed units in both the Army and the Air Force to ascertain whether or not any of those officers were aware of any cases that fit within the criteria provided by Congress. 3 Those findings are summarized below in Section 2.d.

(4) Review of published media articles concerning custody disputes involving members of the Armed Forces.

The authors of this Report have reviewed a number of articles from various media sources concerning child custody disputes involving members of the Armed Forces. None of the servicemembers in those cases lost custody solely because of deployment or the threat of deployment. In far too many of the cases reported by the media, an inadequate summary of the

2 Family law cases (involving divorce, child custody, child and spousal support, and property division) constitute a huge percentage of the total number of civil cases filed in the State courts. For example, in 2006 in Maryland, nearly 46% (127,974) of the 278,511 total filings in the trial courts of general jurisdiction involved family and juvenile cases. In New Jersey, these cases accounted for 41% (437,216) of the State's 1,071,071 total trial court filings. In Nebraska, family and juvenile court cases represented 58% of the State's total trial court cases. In Nevada these cases accounted for 49% of the total number of civil cases. See “Reevaluating Where We Stand: A Comprehensive Survey of America's Family Justice Systems,” 48 FAMILY COURT REVIEW 230 (April 2008), at 3-6.

3 Commanders were queried as to whether they knew of any members of the Armed Forces who had lost custody of children solely as a result of deployment or the threat of deployment under military orders. They were also asked for an assessment of the nature and extent of the problem, if any, for members of the Armed Forces who are custodial parents and who must deploy and perform their operational mission while continuing to fulfill their role as parents with sole or joint custody of minor children.
actual facts involved in the case leads to a mistaken impression that judges all over the country are removing children from military custodian parents or refusing to grant custody to military parents for no other reason than their susceptibility to deployment. The reality is far different. In the few cases in which the servicemember did not gain or maintain custody, numerous factors other than or in addition to deployment or the threat of deployment accounted for the decision.

(5) Consultation with Military Law Committee of Family Law Section, American Bar Association.

The Director of Legal Policy, Office of the Under Secretary of Defense for Personnel and Readiness, regularly attends the quarterly meetings of the Standing Committee on Legal Assistance to Military Personnel (LAMP) of the American Bar Association (ABA). Issues related to military child custody have been a pressing topic at each LAMP Committee meeting for the past four or more years. A representative of the Military Law Committee of the Family Law Section of the ABA also attends the LAMP Committee meetings. It is through liaison with the representatives from ABA’s Family Law Section that significant insight and specific case examples have been gleaned during the research for the preparation of this Report. Those attorneys who provide liaison from the ABA Family Law Section to LAMP are among the most respected practitioners of family law and child custody litigation in the country. They speak for the Family Law Section, one of the largest components of the ABA, an organization that represents over 400,000 attorneys and judges in the United States.

(6) Analysis of Federal statutes related to child custody disputes involving members of the Armed Forces.

Research on other Federal statutes related to child custody disputes involving members of the Armed Forces was conducted using Westlaw and sources already known to the authors of this Report.

(7) Analysis of state laws related to child custody laws pertaining to members of the Armed Forces.

A comprehensive chart showing the status in all 50 states of legislation that specifically deals with military child custody matters was initially compiled by the DoD-State Liaison Office. Due to significant activity in various state legislatures in 2009 and 2010 to date as shown in Section 2.e. infra, the overall list has been updated by the authors of this Report working in concert with the DoD-State Liaison Office. The most up-to-date list of state laws regarding child custody involving military personnel is attached at Tab 1 of this Report.

(8) Review of materials received from various Veterans Service Organizations.

In the hearing of the Subcommittee on Economic Opportunity of the House Veterans Affairs Committee on February 25, 2010, a representative of the Iraqi-Afghanistan Veterans of America (IAVA) testified that he had letters from servicemembers whose cases would have been
helped by enactment of H.R. 4469. Following the hearing, the authors of this report contacted IAVA and requested copies of those letters so that contact could be made with those servicemembers to ascertain if their cases fell within the types of cases described in Section 572 of the FY2010 NDAA - that is, if any of them were from servicemembers who had lost custody of a child solely as a result of deployment or the threat of deployment. The IAVA produced a single letter from an officer whose case was already known to the authors of this Report and is discussed below in Section 2.a. IAVA representatives indicated that this was the only letter they had to submit.

(9) Review of responses to data call from Service legal assistance attorneys.

A data call seeking input from judge advocates from all branches of the Armed Forces has been initiated to see if there are specific cases known to the legal assistance officers that would be pertinent to the topic of child custody litigation involving deployed or deploying personnel. The results of that data call are not yet available but will be provided in a supplemental response should they suggest conclusions inconsistent with those otherwise reached in this Report.

2. Responses to specific requirements of Section 572 of P.L. 111-84 (NDAA for FY2010).

a. Report of the total number of cases, by Armed Force, in which members of the Armed Forces have lost custody of a child as a result of deployment, or the prospect of deployment under military orders.

Extensive research of reported appellate cases decided since 2003 does not disclose any instance of a servicemember having lost custody of a child solely as a result of deployment or the prospect of deployment. Although it is possible that there are trial-level decisions reaching such a conclusion, those decisions are not reported in any searchable database. In several of the reported appellate cases that have been reviewed, the court mentioned the deployment or impending deployment of the servicemember-litigant, or the consequences of such deployment, as one of numerous factors the courts analyzed to determine the best interests of the child. However, no case has been found in which a court ruled that deployment or the prospect of deployment, standing alone, constituted the necessary grounds to either deny custody (in an initial determination) or require a change of custody from the servicemember-parent to the non-military parent.

A scholarly analysis of the impact of military service on child custody cases was conducted in 2007 (and updated since that date to the present) in the Annotation, “Effect of Parent’s Military Service Upon Child Custody,” 21 A.L.R. 6th 577 (2007). In that Annotation, a total of 33 cases were reported from 2003 until the present. Each of those cases is analyzed at Tab 3 of this Report. In none of the reported cases discussed in the Annotation was deployment

H.R. 4469 proposes an amendment to the Servicemembers Civil Relief Act, 50 U.S.C. App. §§501-596, which would mandate certain outcomes in child custody litigation involving members of the Armed Forces who were deployed in support of contingency operations. The text of H.R. 4469 is attached at Tab 2.
or the threat of deployment the sole factor in withholding custody from a servicemember in any initial determination of custody or loss of custody by a servicemember in a change of custody proceeding. Included in the case-by-case analysis are cases in which the effect of deployments was considered by courts in custody disputes (notably Diffin v. Towne discussed more fully below), but even the effect of deployment was only one of the myriad factors that the courts analyzed in determining the best interests of the child.

The reality gleaned from a careful review of each of the cases in the Annotation (and other cases located through additional research) is the fact that child custody litigation rarely, if ever, is determined by any single factor. Virtually all of these cases involve complex fact patterns and are extremely fact-sensitive. Few of the fact patterns repeat themselves from case to case, calling into question the effectiveness of “one size fits all” legislation that fails to comprehensively deal with the many issues presented in child custody determinations.

Two of the cases listed in the Annotation and outlined in the summaries at Tab 3 bear closer examination, because they have frequently been cited incorrectly as cases in which deployment alone caused a change in custody from a servicemember. In Diffin v. Towne, 47 A.D. 3d 988, 849 N.Y.S.2d 687 (2008), the Supreme Court, Appellate Division, in New York State affirmed a lower court’s ruling that changed primary custody of a child from the mother (Towne) to the father (Diffin). The mother was in the Army National Guard and deployed to Iraq during 2004-2005. The parents of the son (Derrell, born in 1995) separated in 1997 and had shared custody of Derrell since their separation, with primary physical custody to the mother who resided in New York. The father relocated to Virginia and remarried and had a daughter by his second wife. The mother also remarried and had a son by her second husband.

The change of custody action was filed by Derrell’s father before the mother deployed when he learned – only a month before her deployment was scheduled – that she intended to leave Derrell with his step-father (the mother’s new husband – a legal stranger as to Derrell) while she was gone to Iraq. When the father learned of his ex-wife’s plan, the father filed an action seeking a change of custody. At an initial hearing (set on an expedited basis because of the mother’s impending deployment), the Family Court entered a temporary order placing Derrell with his father, finding that the exceptional circumstances required to award even temporary custody to a non-parent over the rights of a parent did not exist. See Diffin v. Towne, 3 Misc. 3d 1107(A), 787 N.Y.S. 2d 677 (N.Y. Fam. Ct. May 21, 2004).

At the mother’s request under New York Military Law, the trial of the matter concerning the father’s request for a permanent change of physical custody of Derrell was stayed during the duration of Towne’s deployment. After the school year ended, Derrell moved to Virginia and resided with his father and the father’s new wife and daughter. When the mother returned from deployment to Iraq, a trial was held to determine the primary physical custodian of Derrell. At the trial, Derrell did not express a preference to reside with one parent over another.

The Family Court awarded the primary physical custody of Derrell to his father (a change of physical custody). In its opinion affirming the trial court’s ruling, the Appellate Division noted:
We begin our discussion by noting that the parties are both excellent parents. Both have demonstrated stable employment, adequate income, suitable homes, and an unwavering commitment to Derrell’s well-being. Indeed, the parties enjoyed a long-standing shared custody arrangement that nurtured Derrell’s relationships with both parents, his half siblings, his stepparents and other family members; an arrangement which, but for the mother’s deployment in 2004, might well remain in effect today.

However, the fact remains that the mother was deployed and, while we do not hold that her deployment in and of itself constitutes a significant change in circumstances, we must consider the consequences of her extended absence in determining whether such a change exists. Since shortly after Family Court issued the temporary custody order, Derrell has been living with his father and has adjusted well. Not only has he done well academically, he has actively participated in organized sports, made friends and developed a strong bond with his sister. Importantly, coupled with the substantial changes in Derrell’s life is the change in the mother’s situation, in that she is now legally separated from her husband and shares custody of Derrell’s brother with him, and has vacated the marital home where Derrell lived before moving in with his father. Without assigning blame to the mother for any of these intervening events, we conclude that, taken together, they constitute a significant change in circumstances sufficient to trigger an analysis of Derrell’s best interests.


Thus, the Appellate Division holding in Diffin, although custody was changed, is not a case in which deployment standing alone was sufficient to constitute a change in circumstances requiring a change in primary physical custody. To the contrary, the court expressly rejected such a position. However, the court also rejected the notion that the effects of an absence due to military orders were not appropriate custody considerations. Often the media report cases where military parents have lost custody "because of their military service," when, in fact, the military parents lost custody due, at least in part, to the effects of military service. Indeed, as the Appellate Division stated in Diffin, "but for" the military absence, the pre-absence custody arrangement may have continued. Unless the best interests of the child are completely subordinated to those of an absent parent, the effects of an absence must remain legitimate factors for state courts to consider.

Also summarized at Tab 3 is the Kentucky case of Crouch v. Crouch, 201 S.W. 3d 463 (Kentucky Sup. Ct. 2006), in which a National Guard mother was successful on appeal at having physical custody of her child returned to her from the child’s father after her period of mobilization (but not deployment). Eva Crouch (whose last name is now “Slusher”) had raised her daughter, Sara, for six years after her divorce. When Slusher was mobilized, Sara went to stay with Slusher’s ex-husband (Sara’s father) under what all agreed was to be a temporary

5 See, e.g., William H. McMichael, Deployed soldier loses custody to civilian ex-husband, Army Times, January 22, 2008, an article reporting on Diffin.
arrangement. A court order, entered shortly before Slusher reported for duty at Fort Campbell, Kentucky, appointed the ex-husband as the custodian of the child “until further orders of the Court.” When Slusher came home a year and a half later, however, her husband refused to return Sara to her and a judge ruled that the temporary order was a permanent one. Slusher appealed the trial court’s ruling and an intermediate appellate court reversed the lower court and ordered the child returned to Slusher. The Kentucky Supreme Court affirmed the intermediate appellate court and physical custody of Sara was returned to Slusher.

In addition to the cases summarized at Tab 3, additional research also led to several other reported cases, including Lindberg v. Lindberg, 770 N.W. 2d 252 (N.D. 2009), a case in which the servicemember-father represented himself at all stages of the proceeding, including the appeal to the Supreme Court of North Dakota. Lindberg was an Army officer who eventually left active duty and joined the Minnesota National Guard. The couple married in 1994 and had three children while Lindberg was still on active duty. The couple physically separated in 2004, after he had already deployed to Iraq at least once. At that time, the mother and the children moved in with her parents, and Lindberg continued to reside in the family home. In their divorce action, Lindberg sought an initial award of custody (which would have essentially amounted to a change of custody since the children had been in the custody of their mother for more than three years).7

Under the governing North Dakota statute, the trial court must consider 13 different factors in awarding custody of a minor child. Those factors, as found in N.D. C.C. 14-09-06.2, are:

14-09-06.2. Best interests and welfare of child - Court consideration - Factors.
1. For the purpose of parental rights and responsibilities, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:

   a. The love, affection, and other emotional ties existing between the parents and child and the ability of each parent to provide the child with nurture, love, affection, and guidance.

   b. The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment.

   c. The child's developmental needs and the ability of each parent to meet those needs, both in the present and in the future.

   d. The sufficiency and stability of each parent's home environment, the impact of extended family, the length of time the child has lived in each

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7 Additional cases – none of which resulted in loss of custody for a servicemember parent due solely to deployment or the prospect of deployment – are summarized and discussed below in Section 2.c.
parent's home, and the desirability of maintaining continuity in the child's home and community.

e. The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.

f. The moral fitness of the parents, as that fitness impacts the child.

g. The mental and physical health of the parents, as that health impacts the child.

h. The home, school, and community records of the child and the potential effect of any change.

i. If the court finds by clear and convincing evidence that a child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature child. The court also shall give due consideration to other factors that may have affected the child's preference, including whether the child's preference was based on undesirable or improper influences.

j. Evidence of domestic violence. In determining parental rights and responsibilities, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded residential responsibility for the child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent have residential responsibility. The court shall cite specific findings of fact to show that the residential responsibility best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, residential responsibility for a child may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards residential responsibility to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent residential responsibility. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.
k. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

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

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

The *Lindberg* trial court found several factors, including factor d., in favor of the mother and that finding was one of Lindberg's grounds for appeal. He argued that his absence from the children due to military service should not be considered in the analysis of factors. The courts, both at the trial level and the Supreme Court of North Dakota, found otherwise. The Supreme Court noted that the time computed under that factor was "backward looking." It did not matter to the court what the reason for Lindberg's absence from the children was (and the court took pains to compliment Lindberg on his service to the country).

In adding up the number of days he had been with the children versus the number of days the mother had been with them, the mother had been with the children longer – regardless of the reason for Lindberg's absence. The computation of competing amounts of "face time" with the children was one of 13 relevant factors considered by the court in affirming the grant of custody to the mother in the first instance. The majority of the factors involved in the North Dakota child custody statute weighed in favor of the mother continuing her custody of the children, and the trial court ruled in her favor based on the totality of the circumstances.

The review of reported child custody cases involving servicemembers does not indicate that state court judges have ever denied servicemembers custody of their children solely as a result of deployment or the prospect of deployment.

In addition to the review of reported child custody cases involving servicemembers, contact was made with several of the family court judges who responded to the survey circulated by the National Council of Juvenile and Family Court Judges (NCJFCJ) concerning child custody matters involving servicemembers. None of the judges interviewed advised that deployment or the prospect of deployment – standing alone – had been the sole determining factor in any child custody case they had handled, but the effects of deployment had to be taken into consideration in a determination of the best interests of the child.

Additional interviews with judges handling exclusively family court matters in Louisiana resulted in the same conclusion: deployment or the prospect of deployment standing alone will never be the sole determining factor in a custody dispute, although the effect of deployment has to be one of the multitude of factors taken into consideration in determining the best interests of any child.
No amount of legislation, at either the state or federal level, can prevent noncustodial parents from initiating custody litigation. The research indicates that judges recognize the difficulties inherent in military service for custodial parents and rule, as was ultimately the case in Crouch, that children temporarily entrusted to the non-custodial parent, or to a third party, must be returned when the mobilization terminates unless a significant change in circumstance dictates that a return of the child would not be in the best interests of the child. The best way to accomplish those desired outcomes is to legislate through the states for a statutory basis of protection for the servicemembers consistent with each state’s applicable law. Not only are state legislatures in a better position to craft comprehensive legislation dealing with all aspects of military child custody (including mid-tour leave visitation provisions, allowances for grandparents or step-parent visitation with the children during deployments and other specific protections for the servicemembers), but the states control all the government resources designed to assist with these domestic conflicts.  

b. Summary of applicable Federal law pertaining to child custody disputes involving members of the Armed Forces.

The most important Federal law pertaining to child custody disputes involving members of the Armed Forces are the provisions of the SCRA that are specifically applicable to domestic cases: 50 U.S.C. App. §521(a) and §522(a).

Section 521 provides protection for servicemembers against default judgments, except for those taken in strict conformity with the statute. Failure to follow the requirements of the SCRA leaves a default judgment subject to being set aside at any time during the servicemember’s active duty or for 90 days after release from active duty. The protection against default judgments is only applicable in those cases in which the servicemember has not received notice of the action.

If a default judgment is taken against a servicemember in violation of the protections of Section 521 and if the servicemember had a bona fide defense to the action, the servicemember can move the court to set aside the default judgment at any time during his or her service or for a period of up to 90 days after release from active duty. In a custody matter, an order awarding custody of a minor child to the non-servicemember parent, if taken in violation of the protections of Section 521, could be challenged and set aside by the servicemember after returning home, assuming of course that a bona fide defense to the action existed. In child custody litigation, there is almost always going to be a defense that could have been asserted had the servicemember known about and participated in the hearing that led to the default judgment.

Section 522 mandates at least a 90-day stay of proceedings in cases in which the servicemember has notice of the action when application for a stay is made by the servicemember and corroborated by the member’s commander in the manner called for in the statute. The phrase “including any child custody proceedings” (emphasis added) was added to the first subsection of each of those sections of the SCRA by an amendment that became

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8 Since 1890, the United States Supreme Court has recognized the “[t]he whole subject of domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.” Ex parte Burrus, 136 U.S. 586, 593 (1890).
effective on 28 January 2008. These two provisions of the SCRA are the principal Federal law that comes into play in child custody disputes when one of the parties either has no notice of a hearing or has notice but is unavailable because of military duties.

Some creative family law practitioners have had success in state courts using the broad provisions of 50 U.S.C. App. §591, the “anticipatory relief” provision in the SCRA. At first reading, that section applies to a reorganization of commonly understood conventional obligations such as mortgage and car loan payments. However, the statute does allow for application to a court for relief concerning “any other obligation” incurred prior to service. Presumably, that would include the obligation to allow visitation with the non-custodial spouse and other matters related to child custody.

Section 591 has been used successfully in a New Jersey case involving an active duty soldier-mother about to be deployed who temporarily entrusted her child to the father. When the father told the mother she would not be allowed telephone contact with the child or visitation with the child during the mother's mid-tour leave, pro bono counsel for the mother went to court in New Jersey (where the child’s father resided) on an emergency application for anticipatory relief (under 50 U.S.C. App. § 591) and obtained an order requiring the father to facilitate the mother’s contact with the child by telephone during her deployment and to grant the mother visitation rights during her mid-term leave.9

In reality, however, all child custody orders are subject to review and revision during the minority of the child/children. Therefore, technically speaking, resort to Section 591 is probably unnecessary. If the deploying custodial parent thought it necessary to obtain court approval, for example, of a Family Care Plan or to get a ruling before deployment that the deployed parent could have custody of the child during the mid-tour leave, virtually all family courts – given sufficient pre-deployment notice – would set a hearing before the deployment to get those matters resolved in advance of the servicemember’s absence for duty. The key in all such cases is early planning and coordination with the non-custodial parent or, if necessary, court approval of custodial and visitation arrangements well in advance of the deployment.

There are no other Federal statutes that specifically pertain to child custody disputes involving members of the Armed Forces. There are, however, other Federal statutes that might be applicable to members of the Armed Forces, as well as everyone else. They include:

a. 42 U.S.C. §§11601-611. Implementing the Convention on the Civil Aspects of International Child Abduction (the Hague Convention);
b. 10 U.S.C. §814. Requiring the delivery of military personnel to state authorities in cases of parental kidnapping allegations;
c. 10 U.S.C. §1408. Providing for the payment of military retired/retainer pay for child support awards;

9 The case resulted in an order of the trial court protecting the non-custodial servicemember’s contact and visitation rights. Information concerning the case was obtained from an interview with the servicemember’s pro bono civilian counsel.

c. An Analysis of the litigation history of all available reported cases involving child custody disputes in which the deployment of a member of the Armed Forces was an issue in the dispute, and a discussion of the rationale presented by deciding judges and courts of the reasons for their rulings.

As shown in the summaries of cases discussed above in Section 2.a., different state courts have considered the effect and impact of deployment in several decisions, but no case has held that a custodial parent was unsuited for continuation of a custodial role solely as a result of either deployment or the prospect of deployment. In several reported cases the servicemember-custodial parent made arrangements for a child to be left with a step-parent and such arrangements, at least on a temporary basis, were upheld by courts in Ohio, New Jersey, Colorado, Louisiana, and Kansas.10

A thorough analysis of the impact of military deployment on an Army Reserve soldier who was the parent of primary residence (PPR, the term used in New Jersey for the domiciliary or custodial parent) was presented in Faucett v. Vasquez, 411 N.J. Super. 108, 984 A. 2d 460 (2009). In that case, the soldier (Faucett) and his ex-wife (Vasquez) divorced in 2001. Their son had been living with Faucett and his new wife, along with her two children from a prior marriage. In 2008, a dispute (unrelated to Faucett’s military deployment) arose between Faucett and Vasquez concerning child support and parenting time. During the course of that custody proceeding, Vasquez filed a motion for an immediate change of custody based on Faucett’s impending mobilization and deployment. The trial court denied her motion, noting:

"[Faucett’s] upcoming deployment . . . [w]as not a sudden development’ and ‘was known to the parties well in advance.” [The trial judge] further noted that Billy [the child] was ‘currently enrolled in school,’ and [Vasquez ] had made ‘no showing that the child w[ould] be harmed in any way if, pending the filing of a motion, the child continue[d] to live with [Faucett’s] spouse in the same house he ha[d] been living in.’ The judge also noted that ‘defendant’s contention that this deployment will immediately and adversely affect [Billy] w[ould] need further development, most likely with the benefit of a custody expert analysis."

Id. at 114-15. Vasquez then filed a motion to modify custody and parenting time and sought child support from Faucett, who opposed the motion and advised the court that the child would stay with his step-mother during the deployment.

10 In the reported cases in which delegation of custody to a step-parent or grandparent by the servicemember-custodial parent was approved by the courts, there was no mention of a challenge by the non-custodial parent based on the ruling in Troxel v. Granville, 530 U.S. 57 (2000). Arguably, the outcome of those cases might have been different if the non-custodial parent had specifically challenged the court’s ability to award custody to the servicemember when the actual custodial duties were going to be delegated to a non-parent of the child.
The trial court, acting solely on affidavits filed in motion practice and without holding a full (plenary) hearing to take evidence, denied Vasquez's motion for change of custody. The judge noted that leaving the child in the home with his step-mother and step-siblings would leave an "intact family unit" where the child had resided continuously since 2006. The trial judge concluded that there was:

no competent evidence produced by [Vasquez] that the child would not be well-cared for by [Faucett's] spouse. There was no evidence that the child's best interests would be served ... by an abrupt change of custody." The judge also rejected Vasquez's contention that "a child should always be with a biological parent[,] noting that 'rule' could not be applied where a child was in the middle of the school year in a stable home. He denied defendant's motion for an immediate change of custody 'without prejudice.'

Id. at 117. Although the appellate court remanded the matter to the trial court for a full hearing, the court did rule in a case of first impression in New Jersey:

that the moving party is not entitled to a parental presumption that modification is warranted solely because of the PPR's military deployment. However, we also conclude that once an otherwise fit parent demonstrates that the PPR is facing deployment for a significant period of time, in our view, one year or more, she has demonstrated a prima facie case and is entitled to a plenary hearing as to disputed material facts regarding the child's best interests, and whether those best interests are served by modification of the existing custody order.

Id. at 111. In other words, deployment or the prospect of deployment alone does not constitute a material change of circumstance, but a non-custodial parent faced with deployment of the custodial parent would have an opportunity for a hearing to determine what was in the best interests of the child. The New Jersey appellate court began its analysis with the most fundamental principle applied in all child custody litigation in every state, regardless of any particular statutes that may apply in any given state: "The touchstone for all custody determinations has always been 'the best interest[s] of the child," citing Kinsella v. Kinsella, 150 N.J. 276, 317, 696 A. 2d 556 (1997). Under that fundamental analytical framework, while deployment or the prospect of deployment standing alone will not constitute grounds for a change of custody, the effects of such deployments are matters that a court would need to consider after a hearing during which evidence could be presented by both sides.

Faucett is not yet a final decision. According to information obtained from an interview with counsel for Faucett, the hearing ordered by the appellate court never took place and Faucett has returned from his deployment. The child remained with Faucett's wife (the boy's step-mother) throughout the deployment, except for visitation periods with the child's mother. The Faucett court located few reported cases that addressed the issues of a servicemember-parent seeking to "delegate" custody or parenting time or duties to a step-parent while he or she was deployed, but it did cite three cases in which that issue had arisen: In re Marriage of

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11 Faucett's counsel was interviewed for this report on April 12, 2010.

In DePalma, an Air Force reservist about to be deployed for the second time to Iraq sought to modify an existing parenting plan to increase his parenting time (visitation time) and to allow his new wife to exercise his parenting time while he was in Iraq. Following two plenary hearings, the trial court in Colorado ruled that the father’s wife (the childrens’ step-mother) should be allowed to care for the children during the father’s parenting time as he had requested. On appeal, that lower court’s order was affirmed when the appellate court found that it “did not perceive that it was an abuse of discretion to modify the plan to accommodate the best interests of the children.” 176 P.3d at 835.

In Lebo v. Lebo, the parties divorced in 2001 and Wilton Lebo, a member of the Louisiana Army National Guard, was named domiciliary parent of the couple’s child. Before Lebo was mobilized and deployed to Afghanistan in 2003, he executed a power of attorney naming his new wife as guardian of the child and giving her authority to act on the child’s behalf. Lebo’s ex-wife exercised a visitation period with the child, at the end of which she refused to return the child to his step-mother’s custody. At that point, the new Mrs. Lebo sued her husband’s ex-wife seeking a civil warrant and a writ of habeas corpus for the return of the child.

The ex-wife filed a motion to annul the civil warrant and attempted to gain legal custody of the child. The trial court ruled, and the appellate court affirmed, that Lebo, as domiciliary parent of the child, had the authority to leave his child in the care of his current wife when he deployed. However, the appellate court ruled that the trial court erred in denying the child’s mother a hearing on the issue of temporary custody while the child’s father was deployed. The appellate court noted that the issue might be moot if the father had returned from Afghanistan.

In the case In the Matter of the Marriage of Rayman, two Army parents had joint custody of their two children with the father named as the primary custodian of the two boys. Four years after the divorce and custody arrangement went into effect, Thomas Rayman received orders for an unaccompanied tour to Korea for a year. He wanted to leave the two boys with his current wife, who would reside in Michigan during the year he was gone to Korea. The children and Rayman’s current wife would reside with Rayman’s parents. However, the new wife subsequently moved with the children to her parents’ home in Texas.

Both parents were deemed fit. Thomas testified that he thought the boys should remain with his wife during his remote tour because putting them under a new parenting technique or new parenting attitude would add to the already existing trauma of the coming move and change in school systems. The ex-wife, Kristine, was in the process of a medical retirement from the

12 See, however, the analysis of the potential impact of Troxel v. Granville at footnote 8 supra.
13 Rayman was decided in 2002, so it is not within those cases the Section 572 report is required to cover, since the timeframe set forth in the Congressional mandate was for cases decided in 2003 and following. However, the case is summarized briefly here in the report to illustrate that courts are not routinely ordering custody of minor children away from servicemember-custodial parents.
Army and had also remarried. She planned on moving to Tennessee after retirement and attending school. She admitted that when she had agreed for Thomas to be the primary physical custodian of the two boys she knew he might at some future date face a remote tour without dependents.

Viewing all the facts, the trial court denied Kristine’s motion to have custody changed to her during Thomas’s deployment. In two paragraphs that are pertinent to the current consideration of how courts are treating servicemember custodial parents, the Kansas Supreme Court wrote:

What Kristine in fact appears to request on appeal . . . is for a bright line rule that a parent with residential custody of his or her children loses that custody when required to be away from his or her children for an extended period of time such as a 5 ½-month military tour to Korea, followed by a month’s time with his or her family, and then followed by an additional 5 ½-month military tour back to Korea. We decline to adopt such a bright line rule requiring change of residential custody to the noncustodial parent.

Each situation involving military families has distinct differences, as do the facts of temporary changes which relate to nonmilitary custodial relationships. The temporary transfer of the parent with residential custody must not automatically trigger a custody change. We reject Kristine’s argument that the parental preference doctrine was violated by the trial court’s ruling under the facts of this case. Custody is an issue to be determined on a case-by-case basis as the trial court did here. [Emphasis added.]

47 P. 3d at 416-17.

In Rayman, the Supreme Court of Kansas expressed the fundamental observation that all child custody decisions are fact-intensive and that no “one size fits all” rules can be readily applied when the primary determining factor in any child custody controversy is the best interests of the child. There are never two child custody cases with the same exact fact patterns. There is always something that requires the state trial court to carefully analyze and determine what custody arrangement is in the best interests of the child.

None of the appellate cases reviewed in the research for this report has revealed any trend of family court judges to rule against servicemember-custodian parents solely as a result of deployment or the prospect of deployment.

d. An assessment of the nature and extent of the problem, if any, for members of the Armed Forces who are custodial parents in being able to deploy and perform their operational mission while continuing to fulfill their role as parents with sole or joint custody of minor children.

Interviews have been conducted with a number of former deployed unit commanders, at the company, battalion, and wing level to assess the nature and extent of the problem, if any,
when custodial parents must deploy and perform their operational mission while continuing to fulfill their role as parents with sole or joint custody of minor children. The overall summary of their responses is: “it’s tough being a custodial parent when you have to deploy, but it can be done – it just takes prior preparation, just like every other aspect of military life.” The commanders interviewed generally agreed that units are given significant notice of deployment and that the “spin-up period” is the proper time for servicemembers to get the issue of child custody resolved – before the deployment begins. Unit commanders have been understandably reluctant to get involved in the personal lives of their personnel, but are learning quickly that the question “who will take care of baby when you go off to war,” has to be addressed before leaving for the war. Members who are custodial parents, whether single or remarried (in other words, any situation in which both parents are not living together) have an additional factor to address before they can deploy: establishing who will care for the child during the deployment.

Commanders who have deployed are acutely aware of the adverse impact on the mission when they have to send a soldier home on emergency leave to fight a custody battle in civilian court. They are also aware of the fact that servicemembers in the area of operation do not need to be thinking about child custody disputes (or any other civil matters) while they are in the war zone. Anything that diverts a servicemember's attention from his or her military duties may adversely impact the unit’s mission, including worries about children.

Thus far, no child custody dispute involving a servicemember has been so severe that it caused a loss of overall unit efficiency according to the commanders interviewed, although in some instances the individual servicemember had to be returned to the CONUS on emergency leave to deal with the problem. But custody disputes while a member is deployed are something to be avoided if at all possible. The best way to do that, according to all the commanders interviewed, is to plan ahead for the custody of the child during deployment. If planning for custody of the child during deployment means communicating with the ex-spouse, that is going to be required so that a Family Care Plan (FCP) can be executed after discussions between both parents.

e. Discussion of measures being taken by the states, or which are under consideration by state legislatures, to address matters relating to child custody disputes in which one of the parties is a member of the Armed Forces, and an assessment of whether state legislatures and state courts are cognizant of issues involving members of the Armed Forces with minor children.

Child custody has been a top priority issue for the Department of Defense-State Liaison Office (DSLO) in 2010. The Department of Defense discusses quality of life issues through

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14 Affected parents are entitled to request a delay in their deployment in appropriate cases, as provided by enclosure 3, paragraph 3.g., of DoDI 1342.19, Family Care Plans.

15 The DSLO is comprised of 13 individuals (2 at the headquarters and 11 Liaisons across the country). The Liaisons primarily work with state policymakers who have identified themselves as interested in the welfare of our active duty, Guard, and Reserve servicemembers and their families. The Liaisons educate state leaders on 10 key issues approved by the Under Secretary of Defense (Personnel and Readiness). As this education process proceeds, the Liaisons build relationships with interested state leaders (normally members of the legislature) and provide
the DSLO that can only be addressed by states. The DSLO engages and educates state policymakers and other state leaders about the needs of military members and their families. By developing state-military communications, DoD works with states to remove unnecessary barriers and improve the quality of life for military families.

Because 30 states\(^\text{16}\) had enacted some provisions for military custody and visitation issues (not necessarily covering all aspects of the issue), DSLO focused efforts in 2010 on the 20 states (Alaska (AL), Arkansas (AK), Connecticut (CT), Delaware (DE), Georgia (GA), Hawaii (HI), Indiana (IN), Louisiana (LA), Massachusetts (MA), Minnesota (MN), Missouri (MO), Nebraska (NE), New Jersey (NJ), Nevada (NV), New Hampshire (NH), New Mexico (NM), Rhode Island (RI), Vermont (VT), West Virginia (WV), and Wyoming (WY)) that appeared not to have enacted any military-specific child custody statutes. Upon further review of these states, MO and WV were found to have statutes covering aspects of military child custody and visitation and consequently were not considered in the priority group of states.

Through their education process, the Regional Liaisons were able to work with legislators in 13 of the remaining 18 states (AL, AK, CT, GA, HI, IN, LA, MA, NJ, NM, RI, VT and WY) (NV had no regular session in 2010). In addition, legislators in nine states not specifically identified (California (CA), Florida (FL), Iowa (IA), Idaho (ID), Kentucky (KY), Mississippi (MS), Pennsylvania (PA), Virginia (VA), and WV) initiated legislation to enhance their current protections. The Regional Liaisons met with members of the executive branch (particularly in the state National Guard) and members of the state bar associations to gain their perspective on child custody statutes and state-specific concerns. Regional Liaisons educated legislators on the importance of the issue to servicemembers and their families. Regional liaisons also provided assistance to legislators (in identified and non-identified states) by providing best practice legislation from states with existing statutes and by providing expert witnesses to testify at hearings.

The following core substantive points and procedural protections were emphasized:

\begin{enumerate}
  \item No permanent orders altering existing custody arrangements should be entered while the custodial parent is unavailable due to military service.
  \item Neither past nor possible future absences due to military service should serve as the sole basis for altering a custody order in place prior to the absence.
  \item The custody order in place before the absence of a military parent should be reinstated within a set time upon the return of the military parent, absent proof that the best interests of the child would be undermined. The non-absent parent should bear the burden of proof.
\end{enumerate}

\footnotesize
16 Citations for the military-specific child custody statutes from those 30 states and from those additional states that have enacted such statutes since September 25, 2009, are at Tab 1.
A servicemember with visitation rights should be allowed to petition the court to allow those visitation rights to be delegated to a third person during the servicemember’s absence due to military service.

Additionally, states should:

a. Allow expedited hearings upon the request of a servicemember; and

b. Allow the court to use electronic testimony when the servicemember is unavailable.

The DSLO worked closely with members of the Family Law Section of the American Bar Association to provide expert witnesses, and upon request from sponsors of the proposed legislation, to review draft language to assess how well it would fulfill the core substantive points and procedural protections within the context of the existing state statutes. The partnership with members of the Family Law Section has proven to be critical in ensuring legislators fully understand how proposed legislation would support servicemembers while maintaining the appropriate focus on the best interests of the child in the court’s deliberative processes.

Mr. Mark Sullivan\textsuperscript{17} wrote an extensive tutorial guide entitled, “Drafting a Military Custody and Visitation Statute,” which captures the best of previous state legislation, plus provides the background and intent of the substantive points. He, along with other attorneys, provided expert written testimony and attended legislative committee hearings in various states to allow legislators to fully understand and explore the effect of and need for military-specific child custody statutes. Review of proposed language by members of the Family Law Section helped to ensure the core substantive points and procedural protections were met while accommodating the approach and priorities established in existing state statutes.

Since September 25, 2009\textsuperscript{18}, legislation favorable to servicemembers involved in child custody disputes has been enacted in Indiana and Vermont. Both houses of the Alaska and Hawaii legislatures have passed such legislation. The bills only await the Governors’ signatures to become law. The following table shows the status of state legislative efforts between September 25, 2010, and April 30, 2010:

\textsuperscript{17} Member of the ABA Family Law Section, retired reserve colonel and member of the Army Judge Advocate General’s Corps. Colonel Sullivan (USAR, Ret) practices family law in North Carolina.

\textsuperscript{18} This is the date that the Secretary of Defense informed Representative Michael Turner that federal child custody legislation was not appropriate and that matters of child custody were best left to the states. The Secretary also concluded that the Department should work with the states to encourage their consideration of military-specific child custody legislation. This letter is attached at Tab 4.
Passed floor vote

Legislators have already identified themselves to sponsor a bill in the 2011 session.

2010 was a 30-day budget only session. Legislators have identified themselves to sponsor a bill in 2011.

Legislation was drafted, but due to 2010 session being limited primarily to budget issues, the legislation was deferred for full consideration during the 2011 session.

<table>
<thead>
<tr>
<th>Targeted States:</th>
<th>Bill(s)</th>
<th>House</th>
<th>Senate</th>
<th>Conference</th>
<th>Governor</th>
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<tbody>
<tr>
<td>AL</td>
<td>HB 408</td>
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<td></td>
</tr>
<tr>
<td>CT</td>
<td></td>
<td>Sponsor identified</td>
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<td></td>
</tr>
<tr>
<td>GA</td>
<td></td>
<td>Failed deadline</td>
<td></td>
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<tr>
<td>HI</td>
<td>HB 2061</td>
<td>Passed floor vote</td>
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<td>Awaiting signature</td>
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<tr>
<td>IN</td>
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<td>Passed floor vote</td>
<td>Signed, law effective 1 July 2010</td>
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<tr>
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<td>Pending in committee</td>
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<tr>
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<td>H 1553</td>
<td>In committee</td>
<td></td>
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<td>NJ</td>
<td>A 1956</td>
<td>In committee</td>
<td></td>
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<tr>
<td>NM</td>
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<td>Passed floor vote</td>
<td>Sine die before vote</td>
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<tr>
<td>RI</td>
<td>H 7346</td>
<td>In committee</td>
<td>In committee</td>
<td></td>
<td></td>
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<td>S 2460</td>
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<td></td>
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<tr>
<td>VT</td>
<td>H 533</td>
<td>Passed floor vote</td>
<td>Passed floor vote</td>
<td>Signed</td>
<td></td>
</tr>
<tr>
<td>WY</td>
<td></td>
<td>Deferred to 2011</td>
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</tbody>
</table>

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19 Bill failed to be introduced with sufficient time to make the cross-over to the Senate. Legislators have already identified themselves to sponsor a bill in the 2011 session.
20 2010 was a 30-day budget only session. Legislators have identified themselves to sponsor a bill in 2011.
21 Legislation was drafted, but due to 2010 session being limited primarily to budget issues, the legislation was deferred for full consideration during the 2011 session.
<table>
<thead>
<tr>
<th>State</th>
<th>Bill(s)</th>
<th>House</th>
<th>Senate</th>
<th>Conference</th>
<th>Governor</th>
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<tr>
<td>FL</td>
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<td>Awaiting floor vote</td>
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<tr>
<td>IA</td>
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<td>Passed floor vote</td>
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<tr>
<td>ID</td>
<td></td>
<td>Failed in committee</td>
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</tr>
<tr>
<td>KY</td>
<td>HB 512</td>
<td>In committee</td>
<td>Bill introduced</td>
<td></td>
<td></td>
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<tr>
<td>MS</td>
<td>SB 2413</td>
<td>Passed floor vote</td>
<td>Passed floor vote</td>
<td>Signed by the governor; effective July 1, 2010.</td>
<td></td>
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<tr>
<td>PA</td>
<td>SB 1221</td>
<td>In committee</td>
<td></td>
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<tr>
<td>VA</td>
<td>HB 165</td>
<td>Left in committee</td>
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<tr>
<td>WV</td>
<td>SB 51</td>
<td>Passed floor vote</td>
<td>Passed floor vote</td>
<td>Signed by governor; effective June 11, 2010.</td>
<td></td>
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</table>

As can be seen from the charts above, since 2009 two states (IN and VT) have enacted the legislation DoD favored. In AK and HI, the legislative process has been completed and the bills await the Governors' signatures. In three other states (IA, MS, and WV), enhanced military child custody statutes have been enacted and will be effective by the Summer of 2010.

Legislation considered in 2010 has benefited from the debate and review afforded by the state legislative process. The best practices from the legislation passed prior to the 2010 session were consolidated as guidance for the legislation considered in this session. Subsequently, the efforts of the 2010 session will form the basis for working with states in 2011 that have not enacted legislation to accommodate the core substantive points and procedural protections. In addition, the best practices from the 2010 session will be used to evaluate the non-targeted states to determine where there may be gaps in the protections provided and also where there may be approaches that can more effectively provide the desired protections for servicemembers, while maintaining the custodial rights of others and the primacy of the best interest of the child.

DSLO will continue to inform state policymakers of ways to improve their legislation and will target both the states that have not considered legislation and those whose legislation might be improved.
f. Discussion of Family Care Plan policies aimed at ensuring that appropriate measures are taken by members of the Armed Forces to avoid litigation in child custody disputes.

Family Care Plans (FCPs) are the cornerstone for readiness for members of the Armed Forces who have dependents. As the events of the last nine years have emphasized – in ways this generation perhaps had not fully appreciated – servicemembers must be ready to drop their own affairs and take up those of this nation at a moment's notice. Moreover, they may be – and have been – called to do so multiple times. Although unaccompanied tours of duty are nothing new, their frequency and duration have dramatically increased since September 11, 2001.

Family members who cannot accompany their mother, father, or legal guardian while away on military duties – whether to deploy to Iraq or Afghanistan, to complete a routine tour of duty at sea, or to provide humanitarian relief to earthquake victims in Haiti, are significantly impacted.

As recognized in a Sense of the Senate, section 556 of S. 1390, 111th Congress, 1st Session: "Properly prepared Family Care Plans are essential to military readiness." Indeed, having a workable FCP for those servicemembers who are custodial parents of minor children is every bit as important to military readiness as weapon proficiency or physical fitness. Avoiding the disruptions that can be caused by “unresolved, challenged, or voided child custody arrangements, contributes to the national defense by enabling members of the Armed Forces to devote their entire energy to their military mission and duties.” Indeed, how focused on the military mission can even the most dedicated servicemembers be when they do not know who is taking care of their children?

This Sense of the Senate well states the fundamental importance of planning for the virtually inevitable absence of the military parent. The FCP must ensure that the child is well taken care of through an arrangement that will remain constant and strong through the duration of the deployment. The best FCP will indeed minimize the strain on the absent servicemember by lessening to the greatest extent possible the likelihood that arrangements established before the deployment will change during the deployment. The greatest chance for avoiding litigation that disrupts mission focus lies with the FCP, not with federal legislation that only establishes rules that apply once the litigation begins.

Section 556(b) of S. 1390 recognizes that FCPs are not generally legal documents that can affect or override child custody determinations made by state courts. Notwithstanding the decisions in *Faucett, DePalma, Rayman*, and *Lebo*, discussed above, child custody cannot generally be delegated or otherwise assigned to a third party (i.e., someone who is not the other biological parent) by virtue of the unilateral decision of a servicemember as documented in an FCP.

In *Troxel v Granville*, 530 U.S. 57 (2000), the Supreme Court recognized the Constitutional rights of a fit parent to make decisions concerning his or her child. The decision

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22 See SEC. 556(a)(1), ll. 14-16, S. 1390. A copy of SEC. 556 of S. 1390 is attached as Tab 5.
23 See SEC 565(a)(1), ll. 16-22, S. 1390.
in *Troxel* generally indicates that any efforts of the custodial parent to “delegate” custody to a third party by virtue of a FCP may be challenged by the other parent asserting the Constitutional right of a parent to make decisions regarding the care, custody, and control of his/her children.

Should a servicemember attempt to delegate custody of a child during a period of military absence to a third party – such as a new spouse or grandparent of the child, non-custodial parents not previously determined to be unfit would have an argument that the child should be placed with them, rather than with the third party.  

At a minimum, an action filed in state court by the non-custodial parent of a child would likely precipitate a hearing during the deployment of the servicemember, notwithstanding the stay provisions of the SCRA, 50 U.S.C. App. § 522. Section 522 might not even be available to help the deployed servicemember if the court considered the litigation to be between only the non-custodial biological parent and the third party to whom the care of the child had been entrusted. But even if the stay provisions were available, the disruption of litigation would still be felt on the battlefield.

The recognition of the rights of the non-custodial parent early in the preparation for deployment is the best way to minimize the almost certain disruption that will otherwise arise. Courts may not look favorably on the servicemember who ignores the non-custodial parent in the planning process.

The New York case of *Diffin v Towne* illustrates the importance of early involvement of the non-custodial parent in the pre-deployment process. The servicemember-mother in *Diffin* failed to inform the non-custodial father of her impending deployment. The father did not discover that the mother was to deploy until one month before she was scheduled to depart. He brought immediate state court action to ensure that the child was left in his custody, and not in the custody of the child’s step-father (the servicemember’s new husband). The mother attempted to delay the action during the period of her deployment, citing New York stay provisions similar to those found in the SCRA. The court took issue with her efforts to use those stay provision as a sword to deny the father his rights, rather than as a shield to defend hers.

Had the mother in *Diffin* involved the non-custodial father earlier in the process, she might have avoided litigation in the two weeks before her impending deployment. The court might also have viewed her in a more favorable light and allowed her to establish facts that would have placed her in the best position to regain custody of her child upon her return. Perhaps litigation could not have been avoided upon her return, but litigation upon the servicemember’s return is better than being forced to litigate such an important issue in the two weeks before actual deployment or worse yet, during the military absence.

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24 Even those courts that might follow *Faucett*, *DePalma*, *Rayman*, and *Lebo* may distinguish those three cases (where the issue was raised with the court in each case before the deployment), when ruling on cases where the motion is first raised by the non-custodial parent after the service member has deployed. Raising this issue with the court before the absence of the service member, as the FCP changes discussed below will emphasize, is crucial.

25 *Diffin* is discussed extensively above in Section 2.a.
On April 29, 2010, the Under Secretary of Defense for Personnel and Readiness signed a new FCP Instruction (Department of Defense Instruction 1342.19). This new Instruction vastly improves the Department's outdated 1992 Instruction by implementing section 556 of S. 1390. The Department's 1992 Instruction did not require a FCP as long as the servicemember was married to a non-servicemember. This meant that no FCP arrangements would be necessary if the servicemember had custody of a child from a previous relationship, but was currently married to a non-servicemember. Furthermore, the 1992 Instruction did not emphasize the legal limitations of the FCP (it is not a legal document that can "delegate" custody), nor did it emphasize the importance of involving the non-custodial parent in the decisions involving the temporary custody of the child. It did not require, or even urge, the servicemember to obtain the permission of the non-custodial parent before designating a temporary third-party caregiver for the child.

In a September 25, 2009, letter to Representative Michael Turner, the Secretary of Defense promised, among other things, to update and standardize FCPs across the Services. He recognized that the Department could use FCPs to address "many of the custody issues that otherwise too often result in litigation after deployment."

As a result of the Secretary's promise, Department of Defense Instruction 1342.19 now addresses each of the points that the Sense of the Senate (section 556 of S. 1390) raised. The new Instruction contains the following provisions:

(1) Those who must have a valid FCP will include (a) single parents, (b) dual-military couples with dependents, or (c) married servicemembers who have custody or joint custody of a child (whose non-custodial biological parent is not the current spouse of the servicemember) or who otherwise bear sole responsibility for the care of children under the age of 19.

(2) Commanders shall advise the servicemember of the risks involved if they are unable or unwilling to contact or gain the consent of the non-custodial parent, if the FCP would leave the child in the custody of a third party.

(3) Commanders shall strongly encourage the servicemember to obtain legal advice, as far in advance of the absence as is practicable, about the implications of failing to include the non-custodial biological or adoptive parent in the FCP process.

(4) Commanders shall inform their personnel of the overriding authority of state courts to determine child custody arrangements, notwithstanding a FCP.

(5) Commanders shall emphasize to their personnel that the failure to involve, or at least inform, the non-custodial biological or adoptive parent of custody arrangements in anticipation of an absence can undermine, or even render useless, the FCP.

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26 A copy of Secretary Gates's September 25, 2009, letter is attached as Tab 4.
(6) Servicemembers should attempt, to the greatest extent possible, to obtain the consent of the non-custodial biological parent to any FCP that would leave the child in the custody of a third party.

(7) Legal assistance attorneys shall, where appropriate, ensure that their clients receive a full explanation of the potential consequences of not including the non-custodial biological or adoptive parent in the creation of a FCP and a discussion of appropriate course of action, to include the benefits of validating temporary custody arrangements and the expected return of the child to the servicemember upon return, with an appropriate court.

g. **Recommendations the Secretary considers appropriate regarding how best to assist members of the Armed Forces who are single, custodial parents with respect to child custody disputes in connection with the performance of military duties, including the need for legislative or administrative action to provide such assistance.**

The most important administrative action the Secretary of Defense can take is already in progress: get the new Family Care Plan instruction to the Services and then closely monitor the implementing regulations and instructions that will follow by the individual Armed Forces.

Beyond getting all servicemembers affected by these child custody issues to cooperate in setting up workable Family Care Plans, the Secretary has also taken specific steps to help strengthen the Department’s coordinatin with the American Bar Association’s (ABA’s) national Military **Pro Bono** Project, which provides free in-court representation to junior enlisted servicemembers who meet certain program requirements.

In the first 18 months of the program, 183 servicemembers have been assigned free civilian counsel to help with a variety of civil legal issues. Family law matters accounted for 121 of the 183 referrals. The participating civilian attorneys are recruited by the Project Director, who is a paid employee of the ABA stationed at that organization’s headquarters in Chicago, IL.27

In his September 25, 2009, the Secretary of Defense indicated he would direct the Military Department Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps to ensure that they are doing all that they can to work with the ABA to publicize, emphasize, and support the ABA’s Military **Pro Bono** Project. In furtherance of this commitment, the Department has mobilized to active duty an Army National Guard Officer with extensive experience in family law and child custody cases to act as a Liaison Officer (LO) between the Services and the Director of the ABA’s Military **Pro Bono** Project.

The LO’s primary responsibility will be to coordinate the referral of cases with the Executive Director of the ABA Military **Pro Bono** Project and with the Services. The LO will ensure the proper and efficient flow of communications between the Service branches and the

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27 A copy of the brochure used by the ABA to recruit attorneys and law firms for the Military **Pro Bono** Project is attached hereto as Tab 6.
ABA, and will bridge the communication gap between military legal assistance officers and civilian attorneys representing servicemembers on child custody issues.

The LO will also assist the pro bono attorneys assigned a particular case to ensure they fully understand the already-existing protections of the SCRA. The LO will also be able to assist these attorneys understand any military-specific issues, practices, or terminology that may affect the litigation or otherwise arise during mobilization and deployment periods. The LO’s duties include:

(1) Ensuring the education of Judge Advocates from all branches of Service on the availability of and operation of the ABA Military Pro Bono Project;

(2) Coordinating with supervising military legal assistance attorneys to ensure cases proposed meet the criteria for assistance under the project;

(3) Tracking the progress of the program by maintaining up-to-date statistics and reporting periodically to the Services and to the Department of Defense;

(4) Coordinating with the Reserve and National Guard Judge Advocates not on active duty, to educate them on the availability of the program and providing updated listings of those willing to provide such pro bono support;

(5) Ensuring that participating Reserve Component Judge Advocates can be certified for retirement points;

(6) Considering specific requests for Department of Defense assistance from the ABA Military Pro Bono Project Executive Director; and

(7) Performing other duties related to child custody as directed.

An initial review of the processes and procedures currently in place between the Services and the ABA Pro Bono Project suggests several ways the Department can improve its practices. Currently, each Service is communicating directly with the Director of the ABA Pro Bono Project to seek assistance for appropriate members of their Service. The communication gap between military legal assistance officers and the civilian pro bono attorneys presents challenges to the efficiency of the case management. Additionally, each Service uses a different procedure to approve cases and submit them to the ABA for review and further processing. This process is inefficient and lacks uniformity, which ultimately delays the response time for the ABA to provide legal assistance to the servicemember.

The LO will review the process by which cases and potential referrals flow to the ABA Military Pro Bono Project Director to identify any inconsistencies or difficulties and determine how the process can work most efficiently. It will help ensure uniformity among the Services and also bridge any communication gaps between military and civilian attorneys. The LO may also make recommendations about the appropriate priority for placement with a civilian attorney. This will help ensure that each case and servicemember receives the necessary legal assistance
and attention in the most efficient and timely manner possible. The Department's LO will be in place for the next six months, after which the Department will consider establishing a permanent DoD LO position.

h. Other recommendations for legislative or administrative action the Secretary considers appropriate.

In his September 25, 2009, letter (Tab 4), the Secretary said he would contact the Governor of each of the states that had not yet passed legislation addressing the special considerations of child custody cases in the military to urge passage of such legislation. Those letters have all been sent and follow-up contacts will be made with the Adjutant General of each of those states on the issue at the close of the legislative sessions. The legislative successes thus far in 2010 prove the effectiveness of the Secretary's efforts.

The Department of Defense has included concerns over child custody matters on the list of the Department's 10 Key Quality of Life Issues that are presented to state governors, legislators, and other state officials. The outstanding results obtained thus far in this state legislative year (summarized above in Section 2.e.) demonstrate the effectiveness of the DoD State Liaison Office and its interaction with state legislators. The website for the Military Community & Family Policy Division of the Department includes detailed information about child custody issues being listed in the 10 Key Quality of Life Issues:

http://www.usa4militaryfamilies.dod.mil/portal/page/mhf/USA4/USA4_HOME_1?current_id=22.60.30.0.0.0.0.0.0&content_id=254483

With the promulgation of the new DoD Instruction 1342.19, the Department will ensure that the Services' implementing regulations are consistent with the new guidance. The anticipated effect of proactive and workable FCPs will be a sharp decrease in the number of child custody battles that arise immediately prior to or during deployments of servicemembers who are custodial parents of minor children.

3. Proposed additional areas of research, training, and publicity.

The new FCP regulations from the Services will require training of commanders, judge advocates, and affected servicemember-parents for maximum effectiveness. After the Service regulations and instructions needed to implement DoD Instruction 1342.19 are in the field, the Office of the Under Secretary of Defense (Personnel and Readiness) (OUSD(P&R)) will coordinate blocks of instruction at the Judge Advocate General Schools for the Services. Additionally, DoD will urge the Services to publish appropriate articles highlighting the requirements for FCPs.

An important additional area of training will be informing the civilian judges and practicing attorneys of the new requirements and emphasis for effective, workable FCPs. To educate these individuals, a presentation has already been arranged for a staff member of the Office of the Undersecretary of Defense for Personnel and Readiness to address the national conference of the National Conference of Juvenile and Family Court Judges in San Diego in July 2010. Efforts are underway to add a course to the curriculum of the NCJFCJ in Reno, Nevada,
for all new family court judges, to familiarize them with the unique aspects of child custody litigation involving servicemembers.

Through the close working relationship the Department enjoys with the ABA, an article about FCPs and their importance will be prepared for publication in the ABA Journal, a publication received (both in hard copy and electronically) and read by the more than 400,000 members of the ABA. Appropriate articles will also be prepared for other publications targeting family law practitioners.

The results of the data call being circulated to legal assistance officers in each of the Services at this time will be analyzed to determine if anecdotal evidence of child custody matters differs in any meaningful way from the actual case studies conducted for the preparation of this Report to Congress.

As a result of a close working relationship that has been established with the National Military Families Association, appropriate publicity through that organization's publications and website will be arranged to highlight the new FCP instructions.

4. **Summary and conclusions.**

This Report concludes where it began, with the observation that issues concerning child custody and legal disputes over child custody are tremendously complex, fact intensive, and often bitterly fought between former spouses. As the research into reported cases and the other evidence gathered during preparation of this Report have shown, no custody battle is decided by a single factor and there is no judicial trend and no reported case suggesting that servicemembers are losing custody of their children solely because of their military service.

The custody disputes in which servicemembers are involved simply never turn on one issue – they are as complicated as every other custody battle. Moreover, it is abundantly clear that the legislatures of the states are the appropriate venue for balancing the competing equities of the deploying servicemember and the best interests of the child. Federal legislation in this area would be counter-productive at best and harmful at worst. The United States Supreme Court has indicated on any number of occasions that matters related to child custody and visitation or other “adjustments to family status” are best left to state – and not federal – courts. *See Ankenbrandt v. Richards and Kessler*, 504 U.S. 689, 703-04 (1992).

The following facts are known:

a. Approximately 142,000 military members are custodial parents of children in which the other biological parent does not reside in the home with the children;

b. The Department of Defense is heavily engaged in deploying its servicemembers for lengthy periods and will, in all likelihood, continue the heavy operational tempo for the foreseeable future; and
c. Appropriate planning for custody of children in the event the custodial parent has to deploy is an integral part of mission readiness.

With those factors in mind, the Department will promulgate its new FCP Instruction to the Services, will closely monitor the issuance of the regulations and instructions from the Services needed to implement the Department's FCP instruction, and will ensure appropriate education of commanders, judge advocates, and servicemembers who are custodial parents as to the requirements of FCPs. The Department will also spearhead a campaign of appropriate publicity and education concerning the need for a workable FCP and the critical importance of resolving issues related to child custody before a deployment begins - not after it has begun.

The significant efforts of the Department's State Liaison Office to get state legislatures to adopt military-specific child custody statutes that appropriately consider the unique circumstances facing military parents who must deploy, have resulted in tremendous success thus far. Those efforts will continue and the remaining states that have not yet enacted such statutes will be the focus of continued emphasis.

In those appropriate cases in which the preventive law aspects of a FCP are not sufficient to prevent litigation over child custody matters, the Department will continue to work with the ABA's national Military Pro Bono Project to help servicemembers get free counsel for such litigation. The addition of an LO at the Department level to coordinate this effort with the ABA will streamline that process and benefit those servicemembers.

There is no evidence of any trend in family courts to remove custody of minor children from servicemembers solely as a result of deployment or the prospect of deployment. The vast majority of the cases reported by the media in which such allegations have been made involve servicemembers who ultimately prevail in litigation against their former spouses (or the other biological parent of the child involved), and who are understandably unhappy about the expense in attorneys fees and time that such litigation causes. However, no legislation can prevent dedicated ex-spouses from filing change of custody actions and efforts at “one size fits all” statutes that mandate a particular outcome based on a single factor are ill-advised and unworkable.

The reported cases clearly demonstrate that the best interests of the child will always be the paramount concern of a family court judge. Candor and credibility of the parents - be they servicemembers or civilians - is a critical element in the family court’s determination of which parent should have custody of a minor child. The cases reveal that the later a servicemember-custodial parent begins the process of placement of the child for the period of deployment, the less the court is willing to defer to that parent’s wishes as to custody of the children during the parent’s absence. Establishing workable, realistic FCPs in appropriate cases, plans that include coordination with the other parent of the child, is the best way to prevent, or at least mitigate, subsequent litigation over child custody.
Nothing presented in this Report changes the previously expressed and consistently-stated opposition of the Department to any substantive federal legislation involving child custody litigation related to members of the Armed Forces. The Department opposed H.R. 4469 at the February 25, 2010, hearing before the Subcommittee on Economic Opportunity of the House Committee on Veterans Affairs. That opposition remains unchanged.

In response to the requirement from Congress for this Report, the Department believes that effective legislation on the state level more appropriately addresses the issues of child custody related to military service. Moreover, the most effective measure to minimize the potential disruption of child custody litigation involving deployed or deploying servicemembers is an appropriate Family Care Plan, which emphasizes early consultation with the non-custodial parent concerning custody arrangements in the event of deployment.

30 The Department opposed Section 584 of H.R. 2647, 111th Congress, 1st Session, Engrossed as Agreed to or Passed by the House, a proposal that is identical to H.R. 4469 which is currently pending before the House. See Tab 7. The Department’s opposition to H.R. 4469 or any such legislation remains unchanged.

31 See the testimony of Colonel D. Shawn Shumake, Director, Office of Legal Policy, Office of the Undersecretary of Defense for Personnel and Readiness, before the Subcommittee (Tab 8).

32 See Tabs 9 (Section 572 of H.R. 2647) and 10 (the Conference Committee Report to Accompany H.R. 2647).
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1. State Military Child Custody Statutes
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To amend the Servicemembers Civil Relief Act to provide for protection of child custody arrangements for parents who are members of the Armed Forces deployed in support of a contingency operation.

IN THE HOUSE OF REPRESENTATIVES
JANUARY 19, 2010
Mr. TURNER introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL
To amend the Servicemembers Civil Relief Act to provide for protection of child custody arrangements for parents who are members of the Armed Forces deployed in support of a contingency operation.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. PROTECTION OF CHILD CUSTODY ARRANGE-
4 MENTS FOR PARENTS WHO ARE MEMBERS OF
5 THE ARMED FORCES DEPLOYED IN SUPPORT
6 OF A CONTINGENCY OPERATION.
7 (a) CHILD CUSTODY PROTECTION.—Title II of the
8 Servicemembers Civil Relief Act (50 U.S.C. App. 521 et
seq.) is amended by adding at the end the following new section:

"SEC. 298. CHILD CUSTODY PROTECTION.

(a) Restriction on Change of Custody.—If a motion for change of custody of a child of a servicemember is filed while the servicemember is deployed in support of a contingency operation, no court may enter an order modifying or amending any previous judgment or order, or issue a new order, that changes the custody arrangement for that child that existed as of the date of the deployment of the servicemember, except that a court may enter a temporary custody order if the court finds that it is in the best interest of the child.

(b) Completion of Deployment.—In any proceeding covered under subsection (a), a court shall require that, upon the return of the servicemember from deployment in support of a contingency operation, the custody order that was in effect immediately preceding the date of the deployment of the servicemember is reinstated, unless the court finds that such a reinstatement is not in the best interest of the child, except that any such finding shall be subject to subsection (c).

(c) Exclusion of Military Service From Determination of Child’s Best Interest.—If a motion for the change of custody of the child of a servicemember
is filed, no court may consider the absence of the service-
member by reason of deployment, or possibility of deploy-
ment, in determining the best interest of the child.

"(d) NO FEDERAL RIGHT OF ACTION.—Nothing in
this section shall create a Federal right of action.

"(e) PREEMPTION.—In any case where State or Fed-
eral law applicable to a child custody proceeding under
State or Federal law provides a higher standard of protec-
tion to the rights of the parent who is a servicemember
than the rights provided under this section, the State or
Federal court shall apply the State or Federal standard.

"(f) CONTINGENCY OPERATION DEFINED.—In this
section, the term ‘contingency operation’ has the meaning
given that term in section 101(a)(13) of title 10, United
States Code, except that the term may include such other
deployments as the Secretary may prescribe.”.

(b) CLERICAL AMENDMENT.—The table of contents
in section 1(b) of such Act is amended by adding at the
end of the items relating to title II the following new item:

“208. Child custody protection.”.
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Rodriguez v. King, 288 Wis. 2d 657, 2005 WL 2990897 (Wis. Ct. of App. 2005).................. 33
Summary: Parents never married. Child (born in 1993) lived with mother until 1996 or 1997 when father took custody of the child, apparently with permission of the mother. Father received court-awarded custody of the child in 1998. Mother petitioned for custody in January 2005, at a time when she had been married and divorced twice since the relationship with the father of the child in question. At the time the mother petitioned for custody, she was living with her fiancé and two children she had from a relationship before her relationship with the father of the child in question. She had lived in five different places in the 18 months preceding the trial. Juvenile court awarded custody to the mother. Father appealed. Appellate court reversed and remanded. (Mother’s evidence demonstrated that she may well have improved her circumstances. However, improvement in the mother’s circumstances was not sufficient to meet the requirements for a change of custody.) The servicemember-father had previously left the child with his sister during an unaccompanied tour to Korea, during which the mother never sought to keep the child.

CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.
Summary: Divorce judgment (1999) awarded parties joint custody. Mother moved the children to Alabama (father stationed in Georgia). The parties had problems with original custody privileges. Georgia court modified judgment to change father’s custodial periods to better serve the interests of the children and the parties. In March 2000, mother filed petition to modify custody. Father contested jurisdiction and mother’s petition ultimately dismissed. In May 2001, father petitioned the court seeking to have the mother held in contempt for denying him visitation. Mother counter-sued to hold father in contempt, seeking modification of custody and suspension of father’s visitation privileges. Father answered and petitioned for modification of custody. Trial court appointed guardian ad litem for children and appointed a psychologist to perform a custody evaluation. After trial, father was awarded sole physical custody of children. Mother appealed. Appellate court affirmed. (Mother’s behavior was alienating children from the father and was calculated to undermine and destroy the father’s relationship with the children. Trial court considered the behaviors engaged in by the mother to be severe enough and to have continued long enough to warrant a change in custody.)

CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.
**CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.**
Summary: Final judgment of divorce granted the parties joint legal custody with mother having sole physical custody. Morgan County Department of Human Resources (DHR”) filed dependency petition with the juvenile court ("JC") alleging neglect/abuse. JC issued order vesting pendente lite custody of the child with DHR (father was stationed in Afghanistan). Red Cross notified father that child was in foster care. Father contacted DHR to have child moved to his sister’s home and attempted to take emergency leave but was denied. After completion of military assignment, father filed a motion to modify custody and for emergency relief. Circuit court awarded pendente lite custody of child to father. JC dismissed dependency petition. After ore tenus proceeding, court denied father’s motion to modify custody and awarded temporary custody to the mother. Father filed post-judgment motions requesting in part that the circuit court issue a final custody order. After a hearing, the court denied the post-judgment motions. Father appealed. Appeal court reversed and remanded for entry of a judgment awarding custody of the child to the father (despite father being transferred to Hawaii). Appeal court found that the circuit’s court conclusion that father did not meet the burden imposed on him was unsupported by the evidence. Father is a stable parent and has made arrangements for the care of the child. Mother is a drug abuser who continued to live with the boyfriend accused of abusing the child until he pled guilty and was incarcerated. Mother lost custody of the child in part because of the boyfriend and refuses to admit a drug problem or attend parenting classes.

CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT, ALTHOUGH FATHER WAS DEPLOYED WHEN STATE TOOK CUSTODY OF CHILD.

**State:** Alaska

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Custody Determination or Change of Custody Proceeding?</td>
<td>Change of Custody Proceeding</td>
</tr>
<tr>
<td>Branch of Armed Forces</td>
<td>U.S. Army</td>
</tr>
<tr>
<td>Was Servicemember Mother or Father?</td>
<td>Father</td>
</tr>
<tr>
<td>Did Servicemember already have custody?</td>
<td>Yes, he had joint physical custody.</td>
</tr>
<tr>
<td>Did Servicemember lose custody?</td>
<td>No – he gained full physical custody, subject to mother’s visitation rights.</td>
</tr>
<tr>
<td>Did Court mention deployment/prospect of deployment in its ruling?</td>
<td>Not the appellate court, although original custody plan of shared custody had considered the possibility of father deploying up to 75 days per year. By the time of trial, father was in a non-deployable position.</td>
</tr>
</tbody>
</table>

**Summary:** At original custody hearing, court granted joint legal custody and shared physical custody with a detailed schedule of joint custody. The Trial Court modified custody in favor of father based on change in circumstances (father’s impending PCS from Ft Wainwright, AK to Ft Drum, NY and the mother having obstructed the father from co-parenting). The trial court ordered both parents to file a status report on 1 May 2005 (one year after ruling). Appeal court affirmed the decision (given that the status reports will be filed and another modification hearing might be held and there were no mistakes of law or fact.) The original joint custody plan had taken into consideration the possibility of the father’s deployment, but at the time of the trial, he had been reassigned to a non-deployable position.

**APPELLATE DECISION DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT. ORIGINAL JOINT CUSTODY PLAN CONSIDERED DEPLOYMENT AS A FACTOR IN FORMULATING THE SHARED CUSTODY PLAN.**
**Summary:** In divorce proceeding, court entered interim order granting custody of three children to mother and appointed a custody investigator who prepared a report recommending that custody be awarded to father. Court modified interim custody order by granting interim custody of one child to father. After a custody hearing, the court awarded the mother sole legal and physical custody of two children and shared physical custody of one child, placing him with the mother during the school year and the father during the summer months. Trial court found that the father's work schedule (he was a full-time National Guard employee) kept him away from the children much of the time and that the mother had primarily raised the children. Father appealed. Appellate court affirmed.

**CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.**

State: Arkansas

Initial Custody Determination or Change of Custody Proceeding? Change of Custody Proceeding

Branch of Armed Forces Army National Guard

Was Servicemember Mother or Father? Mother

Did Servicemember already have custody? Yes

Did Servicemember lose custody? No

Did Court mention deployment/prospect of deployment in its ruling? No, although it was agreed that mother had left the child with the father during the 19 weeks she was at basic training for the National Guard.

Summary: Parents of a child were never married, but father sued to be declared the child’s father. At the paternity hearing, mother and father were granted joint custody with each party equally responsible for the child’s care and support. Mother subsequently sought and was granted sole custody. Father subsequently filed a petition for modification and mother filed a counter-petition to modify child support and visitation and a petition for contempt for failure to pay child support. After a hearing, trial court found that although a substantial change in circumstance had occurred, the mother retained custody with the father receiving standard visitation as well as visitation every Wednesday night and any weekend the mother had National Guard duties or was participating in active duty or training exercises. Father appealed. Appeal court affirmed. Mother did not lose custody and the court found that having the father take custody of the child during the time of the mother’s National Guard duties was reasonable.

CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.

State: California

Initial Custody Determination or Change of Custody Proceeding? Initial Custody Determination

Branch of Armed Forces U. S. Army (active duty)

Was Servicemember Mother or Father? Father

Did Servicemember already have custody? No – when the father deployed, there was no pending action to dissolve the marriage.

Did Servicemember lose custody? No – servicemember was granted custody

Did Court mention deployment/prospect of deployment in its ruling? No, the father was deployed to Iraq when the State of California removed the children from the mother's care.

Summary: Children were removed from the mother while father was on active duty in Iraq. Mother left clean base quarters at Ft Polk, LA, and returned to her family's home in Bakersfield, CA. Report to Department of Human Services stated children were filthy, house was very dirty, and roaches were all over the walls and cabinets and the floors were covered with dirt, food, trash and dog feces. The social workers spoke with father in Iraq several times after the children were taken into protective custody. Father attempted to have children placed with a friend (who had been raised by his parents and whom he considered a sister) until his return from Iraq. Father granted emergency leave to attend the dispositional hearing and the parties were given joint legal custody with father having sole physical custody of the children. Mother appealed. Appellate Court affirmed. Father was getting discharged so that he could care for his two children.

CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT AS A FACTOR IN THE COURT’S AWARD OF CUSTODY.

**State:** California

<table>
<thead>
<tr>
<th>Initial Custody Determination or Change of Custody Proceeding?</th>
<th>Change of Custody Proceeding</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Branch of Armed Forces</strong></td>
<td>United States Marine Corps</td>
</tr>
<tr>
<td><strong>Was Servicemember Mother or Father?</strong></td>
<td>Father</td>
</tr>
<tr>
<td><strong>Did Servicemember already have custody?</strong></td>
<td>No. Primary domiciliary custody of the daughter was with the mother; original sharing plan gave father custody 25% of the time.</td>
</tr>
<tr>
<td><strong>Did Servicemember lose custody?</strong></td>
<td>No</td>
</tr>
<tr>
<td><strong>Did Court mention deployment/prospect of deployment in its ruling?</strong></td>
<td>No, although the father had deployed for six months during pendency of long-running litigation</td>
</tr>
</tbody>
</table>

**Summary:** Divorce judgment provided for joint legal custody of child with mother having primary physical custody and a sharing plan equal to 25% to father. During the next few years, both parties sought custody modifications due to mother wanting to move out of state, father’s deployment (which he discussed in advance with the child’s mother), allegations of criminal behavior, etc. The mother appealed the denial of her request to move child to another state more than three hours from father’s residence in Yuma, CA. The trial court ruled that the best interests of the child would be better served if she was in the custody of her father and ordered her custody changed from the mother to the Marine officer-father. The appellate court affirmed that finding.

**CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.**

State: Connecticut (trial court proceedings)

<table>
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<tr>
<th>Question</th>
<th>Answer</th>
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</thead>
<tbody>
<tr>
<td>Initial Custody Determination or Change of Custody Proceeding?</td>
<td>Initial custody proceeding during a divorce action.</td>
</tr>
<tr>
<td>Branch of Armed Forces</td>
<td>United States Marine Corps</td>
</tr>
<tr>
<td>Was Servicemember Mother or Father?</td>
<td>Father</td>
</tr>
<tr>
<td>Did Servicemember already have custody?</td>
<td>No</td>
</tr>
<tr>
<td>Did Servicemember lose custody?</td>
<td>No, but he was not awarded custody.</td>
</tr>
<tr>
<td>Did Court mention deployment/prospect of deployment in its ruling?</td>
<td>No, although the father, a Marine, was deployed to Afghanistan during the pendency of the action and the custody trial was delayed pending his return from deployment.</td>
</tr>
</tbody>
</table>

**Summary:** Trial court ordered joint legal custody to parties with mother having primary residential custody of the child. Father was granted supervised visitation with his daughter.

Trial court found that the father would be deployed to Iraq and during the deployment, he would be allowed to send cards, gifts and pictures to his daughter.

CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT AS A BASIS FOR THE COURT'S AWARD OF CUSTODY.

State: Delaware

<table>
<thead>
<tr>
<th>Initial Custody Determination or Change of Custody Proceeding?</th>
<th>Change of Custody Proceeding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Branch of Armed Forces</td>
<td>Delaware Air National Guard</td>
</tr>
<tr>
<td>Was Servicemember Mother or Father?</td>
<td>Father in Delaware Air National Guard but was not presently activated and was planning on retiring.</td>
</tr>
<tr>
<td></td>
<td>Mother was in Air National Guard and was on medical hold at time of trial</td>
</tr>
<tr>
<td>Did Servicemember already have custody?</td>
<td>Father-servicemember had custody at time of trial.</td>
</tr>
<tr>
<td>Did Servicemember lose custody?</td>
<td>Father was awarded primary custody of one child; mother was awarded primary custody of other two children.</td>
</tr>
<tr>
<td>Did Court mention deployment/prospect of deployment in its ruling?</td>
<td>No, although both parents had been in the Air National Guard.</td>
</tr>
</tbody>
</table>

Summary: Original permanent custody order (March 14, 2001) granted joint custody to both parties with primary residential placement with mother. Father filed a motion to modify custody order on 2/12/02 and on 11/4/02 filed a motion for interim relief and temporary custody of 3 children, which the court granted on 1/14/04 because mother was scheduled to depart for six months active duty. On 8/4/04 mother filed a motion to modify custody order (under the impression that father would have residential placement of children while she was in military training, but the children would return to living with her when she returned). Trial court awarded joint custody of the children to both mother and father with residential placement of one child with father and residential placement of the remaining two children with mother. The decision to split the children was fact-based and had nothing to do with military status or deployment.

CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.

State: Georgia

<table>
<thead>
<tr>
<th>Initial Custody Determination or Change of Custody Proceeding?</th>
<th>Change of Custody Proceeding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Branch of Armed Forces</td>
<td>U.S. Army</td>
</tr>
<tr>
<td>Was Servicemember Mother or Father?</td>
<td>Father</td>
</tr>
<tr>
<td>Did Servicemember already have custody?</td>
<td>Yes</td>
</tr>
<tr>
<td>Did Servicemember lose custody?</td>
<td>No</td>
</tr>
<tr>
<td>Did Court mention deployment/prospect of deployment in its ruling?</td>
<td>Court noted that if father-servicemember deployed overseas, the child would be left with the father’s new wife.</td>
</tr>
</tbody>
</table>

Summary: Divorce decree (September 2000) granted the parties shared joint legal and physical custody of the child, with father having physical custody on Wednesday through Sunday and mother having custody Sunday evening through Wednesdays (with alternating weeks). Father enlisted July 2003, served in Iraq and returned to Ft. Riley in February 2004. In May 2004, mother filed an emergency motion for ex parte modification of custody seeking temporary sole custody and legal custody of the child. Father answered and counterclaimed seeking primary physical custody. Trial court did not find sufficient evidence to justify emergency modification, and appointed a guardian ad litem to investigate. After a second hearing in November 2004, court denied mother’s petition for modification citing evidence of drug use and poor care of child and awarded father primary physical custody (but prohibited child from leaving the United States). Father appealed the restriction on overseas moves. Judgment affirmed. Appellate court noted that even if father was assigned duty overseas, he would retain primary physical custody in that the child would remain at hi home with his current wife. He would be free to exercise his custody rights by traveling back to the US during off-duty periods or at the end of his assignment.

COURT DID NOT HOLD DEPLOYMENT OR PROSPECT OF DEPLOYMENT AGAINST SERVICEMEMBER-CUSTODIAL PARENT.
In re The Marriage of Michael Grantham and Tammara Sue Grantham,
698 N.W.2d 140 (Iowa Sup. Ct. 2004)

State: Iowa

Initial Custody Determination or Change of Custody Proceeding? Change of Custody Proceeding

Branch of Armed Forces Army National Guard

Was Servicemember Mother or Father? Father

Did Servicemember already have custody? Yes

Did Servicemember lose custody? Yes

Did Court mention deployment/prospect of deployment in its ruling? No.

Summary: At original custody hearing, both parents granted joint custody with father having primary physical care. Mother initiated change of custody proceeding. Father, who had been mobilized by the National Guard (but not deployed) filed motion to stay until he returned to civilian status. District court denied motion to stay and entered an order temporarily placing children with mother. Following a trial, district court granted mother permanent physical custody. Appeal court reversed and remanded. Supreme Court vacated the decision of the appeal court and affirmed the district court’s decree. Father’s conduct diminished children’s relationship with mother and his own conduct was a primary factor in his loss of custody.

This was an old-SSCRA case in which the granting or refusal to grant a stay of proceedings was within the court’s broad discretion. Arguably, under the 2003 SCRA, the outcome of the request for a stay would have been different. However, the stay issue was not the determining factor. The father’s negative conduct toward the children’s mother was the primary reason the court changed custody to the mother.

CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.

State: Kansas

<table>
<thead>
<tr>
<th>Initial Custody Determination or Change of Custody Proceeding?</th>
<th>Change of Custody Proceeding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Branch of Armed Forces</td>
<td>U.S. Air Force (not clear from opinion but confirmed by interview with counsel)</td>
</tr>
<tr>
<td>Was Servicemember Mother or Father?</td>
<td>Mother</td>
</tr>
<tr>
<td>Did Servicemember already have custody?</td>
<td>Yes</td>
</tr>
<tr>
<td>Did Servicemember lose custody?</td>
<td>No</td>
</tr>
<tr>
<td>Did Court mention deployment/prospect of deployment in its ruling?</td>
<td>No</td>
</tr>
</tbody>
</table>

**Summary:** Both parties granted joint custody of two children with mother awarded residential custody (1/25/01). On 10/23/03, father filed a petition to modify parenting time and proposed parenting plan upon learning that mother, active duty Air Force, had received PCS orders to Keesler AFB, MS. After a hearing, father's motion denied. Father filed motion for reconsideration, also denied. Father appealed. Appellate court affirmed and stated that the district court noted that the military life has been a part of the parties' lives since their marriage and took the military lifestyle into consideration.

**Follow-Up Note:** Although the servicemember-mother won and moved with the children to Keesler AFB, MS, when Hurricane Katrina destroyed the base in September 2005, she returned the children to the father in Kansas, where they still reside.

**CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.**
Crouch v. Crouch, 201 S.W. 3d 463 (Kentucky Sup. Ct. 2006).

State: Kentucky
Initial Custody Determination or Change of Custody Proceeding? Proceeding for return of custody following a temporary, agreed-upon placement of child with Father while Mother was mobilized.

Branch of Armed Forces Kentucky Air National Guard

Was Servicemember Mother or Father? Mother

Did Servicemember already have custody? Yes – the issue was temporary relinquishment to the Father during a period of stateside mobilization.

Did Servicemember lose custody? No – the servicemember won on appeal.

Summary: Divorce decree (12/17/96) granted both parties joint custody with mother having physical custody. In February 2003, mother was notified to report to active federal duty within 72 hours. Mother made arrangements to transfer physical custody of the child to the father. Both parties concede that the custody transfer was temporary and mother would be entitled to reassume physical custody upon being released from active duty. On February 10, 2003 an agreed order was entered stating that the child would reside with the father “until further Orders of the Court.” Mother was not sent overseas but spent a year at Ft. Knox, during which she made several trips to visit the child. In February 2004, mother contacted father to discuss her acceptance into Officer Training School (an additional four months). Father agreed to continue custody of the child during mother’s additional training. Upon completion of training school, mother contacted father who stated that he would not transfer physical custody of the child and that the mother would need to get a court order to enforce agreement. Mother moved the trial court to enforce custody order. Trial Court entered order that child was to remain with father and mother appealed. Appellate court reversed the trial court and found that the February 10, 2003 order was temporary and not a modification of the 1996 permanent custody order which had placed the physical custody of the child with the mother, returning custody of the child to the mother-servicemember. Father appealed. Supreme Court affirmed, based in part on its interpretation of the 2003 order being consistent with newly enacted KRS Sec. 403.340(5) (one of the “military friendly” state statutes enacted concerning child custody involving military parents.)

CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.
**Luplow v. Luplow**, 924 So.2d 1135, 41,021 (La. App. 2d Cir. 2006)

**State:** Louisiana

<table>
<thead>
<tr>
<th>Initial Custody Determination or Change of Custody Proceeding?</th>
<th>Change of custody after initial divorce and agreed-upon joint custody.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Branch of Armed Forces</strong></td>
<td>U.S. Air Force</td>
</tr>
<tr>
<td><strong>Was Servicemember Mother or Father?</strong></td>
<td>Father</td>
</tr>
<tr>
<td><strong>Did Servicemember already have custody?</strong></td>
<td>Yes – joint, shared custody.</td>
</tr>
<tr>
<td><strong>Did Servicemember lose custody?</strong></td>
<td>No, he was awarded primary residential custody of the children.</td>
</tr>
<tr>
<td><strong>Did Court mention deployment/prospect of deployment in its ruling?</strong></td>
<td>No</td>
</tr>
</tbody>
</table>

**Summary:** Consent judgment awarded joint custody of the children to both parties with parties being co-domiciliary parents. Father filed an objection to mother’s proposed move to Texas and requested that he be designated primary domiciliary parent based upon his transfer to Sheppard AFB, TX for retraining and then would be stationed at Luke AFB, AZ. Mother filed rule seeking sole custody of the children or joint custody with her being domiciliary parent. Trial held and joint custody was awarded with father being designated primary domiciliary parent. Mother appealed. Court of appeal affirmed custody award to the father-servicemember.

**CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.**

State: Mississippi

Initial Custody Determination or Change of Custody Proceeding? Initial Custody Determination

Branch of Armed Forces U.S. Air Force

Was Servicemember Mother or Father? Father

Did Servicemember already have custody? No

Did Servicemember lose custody? No – father gained custody.

Did Court mention deployment/prospect of deployment in its ruling? No

Summary: Divorce decree granted custody of child to mother. Father appealed. Judgment reversed and custody of the child was granted to the father. Case was remanded for new determination of visitation rights and child support.

CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.
Giannaris v. Giannaris, 960 So.2d 462 (Mississippi Sup. Ct. 2007)

State: Mississippi

Initial Custody Determination or Change of Custody Proceeding?

Change of Custody Proceeding

Branch of Armed Forces

U. S. Navy

Was Servicemember Mother or Father?

Father

Did Servicemember already have custody?

No

Did Servicemember lose custody?

No

Did Court mention deployment/prospect of deployment in its ruling?

No

Summary: 7/30/02 final divorce and judgment providing mother paramount physical control and custody of child with father having liberal visitation. Following year, father filed complaint seeking primary physical custody of the child. Following a hearing, father was granted custody. Court of appeals affirmed. Supreme Court granted mother’s writ of certiorari and reversed and rendered judgment awarding mother primary physical custody and remanded the support and visitation issues to the court for determination. Supreme Court concluded that the chancellor applied an erroneous legal standard in modifying custody. Material change in circumstances must be in the custodial home (chancellor relied upon move of non-custodial parent, i.e. father being transferred to San Deigo). Supreme Court held that the appeal court erred in attempting to divine the chancellor’s intent, by disregarding his stated reasons, and then relying upon implied facts.

CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.
Cooley v. Cooley, 131 S.W. 3d 901) (Missouri Ct. of App, Western Dist. 2004)

State: Missouri (Court of Appeal)

Initial Custody Determination or Change of Custody Proceeding? Initial custody determination

Branch of Armed Forces U.S. Air Force

Was Servicemember Mother or Father? Mother

Did Servicemember already have custody? No

Did Servicemember lose custody? No

Did Court mention deployment/prospect of deployment in its ruling? No

Summary: At trial, primary custody granted to father. Mother appealed and the appellate court remanded the case because the trial court failed to make any findings regarding domestic abuse. Ultimately, the trial court’s judgment was affirmed. (Father provided stable living environment for the child, the child had been living in the same home for 2 years, had made friends with kids in the neighborhood and started daycare.)

The trial court noted that the mother, while in the Air Force and when the child was only seven months old, had volunteered for a six-week deployment overseas. While the court noted that fact, it found that the mother’s willingness to volunteer to leave the child when the child was only seven months old was relevant to her ability and willingness to perform her role as a mother. The appellate court specifically noted that “by holding that the trial court could consider Mother’s voluntary service, this court does not see how its decision precludes women in the military from having children, as Mother claims.”

CASE DID INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT, BUT THE COURT’S DECISION TURNED ON OTHER FACTORS THAN THE DEPLOYMENT.

State: Missouri

Initial Custody Determination or Change of Custody Proceeding? Change of Custody Proceeding

Branch of Armed Forces U.S. Army

Was Servicemember Mother or Father? Father

Did Servicemember already have custody? No; the mother had custody and father filed for a change of custody.

Did Servicemember lose custody? No – he gained custody.

Did Court mention deployment/prospect of deployment in its ruling? Appellant-mother challenged the court’s determination of the best interest of the child stating that the decision was “not based on substantial evidence in that [father] was being deployed to Afghanistan.” One of the findings included the “judge’s conclusion that [father’s] deployment to Afghanistan was not imminent and was, in fact, merely a future possibility.”

Summary: Pursuant to divorce judgment, the parties were awarded joint custody with mother having primary physical custody. Mother moved to Florida, began experiencing financial difficulties, had trouble finding a job and the child’s medical difficulties had mother missing a lot of work. Mother contacted father to arrange for the father to pick up the child. Contested at trial whether there was an agreement to return the child to mother after the school year. At the end of the school year, mother contacted father to have child returned to Florida. Father refused and filed for custody. The Circuit Court entered an order awarding father temporary custody. At trial, father testified that although it was possible he may be deployed after this situation resolved, his deployment was not imminent or certain. Father stated even if deployed, best interest of child to stay with his wife and new child in New York. Trial court filed a judgment of modification, findings of fact and conclusions of law, awarding custody to the servicemember-father. Judgment affirmed on appeal.

CASE DID INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT AND SERVICEMEMBER-FATHER PREVAILED IN CUSTODY FIGHT.

State: Nevada

Initial Custody Determination or Change of Custody Proceeding? Change of Custody Proceeding

Branch of Armed Force U.S. Air Force (not clear from opinion but confirmed by interview with counsel).

Was Servicemember Mother or Father? Father

Did Servicemember already have custody? No

Did Servicemember lose custody? No

Did Court mention deployment/prospect of deployment in its ruling? No

Summary: At time of 1998 divorce in Kentucky, parties entered into a child custody agreement where they would share joint legal custody with mother having primary physical custody. Father, who was active duty Air Force, moved the Nevada district court to modify child custody and order support. Mother opposed motion. After hearing, the trial court granted father custody and ordered mother to pay child support. District court found “changed circumstances” warranted changing custody. Mother appealed. Appellate court reversed, holding district court abused its discretion when it found changed circumstances based on mother’s alleged interference with father’s visitation rights and further held that father’s remarriage alone was not enough to establish changed circumstances. Change of custody hearing occurred in 2000.

CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.

State: New Jersey

<table>
<thead>
<tr>
<th>Initial Custody Determination or Change of Custody Proceeding?</th>
<th>Change of Custody Proceeding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Branch of Armed Forces</td>
<td>U.S. Army Reserve</td>
</tr>
<tr>
<td>Was Servicemember Mother or Father?</td>
<td>Father</td>
</tr>
<tr>
<td>Did Servicemember already have custody?</td>
<td>Yes</td>
</tr>
<tr>
<td>Did Servicemember lose custody?</td>
<td>No</td>
</tr>
<tr>
<td>Did Court mention deployment/prospect of deployment in its ruling?</td>
<td>Yes – but servicemember did not lose custody. Case was remanded for a hearing which has not yet taken place. Case on further appeal at this time.</td>
</tr>
</tbody>
</table>

**Summary:** Faucett, an Army Reservist, had custody of a child and had remarried and had a new child by his new wife. Seven years after the divorce, father and mother became embroiled in a dispute concerning parenting time and child support. The mother filed an action seeking custody of the child because of the father’s upcoming deployment to Afghanistan. The court declined to award the mother custody and found that the step-mother would care for the child during the father’s deployment, but ordered a full custody hearing on the father’s return. *That hearing has never taken place.* The appellate court held the deployment or the prospect of deployment *alone* did not constitute a material change of circumstance, but a non-custodial parent faced with deployment of the custodial parent was entitled to a hearing to determine the best interests of the child. The decision of the appellate court is now on appeal to the New Jersey Supreme Court.

**CASE DID INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT, AND THE SERVICEMEMBER PREVAILED AT THIS APPELLATE LEVEL.**

### State: New York

<table>
<thead>
<tr>
<th>Initial Custody Determination or Change of Custody Proceeding?</th>
<th>Change of Custody Proceeding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Branch of Armed Forces</td>
<td>U.S. Army</td>
</tr>
<tr>
<td>Was Servicemember Mother or Father?</td>
<td>Father</td>
</tr>
<tr>
<td>Did Servicemember already have custody?</td>
<td>Yes, physical but not legal custody</td>
</tr>
<tr>
<td>Did Servicemember lose custody?</td>
<td>No – he obtained legal custody.</td>
</tr>
<tr>
<td>Did Court mention deployment/prospect of deployment in its ruling?</td>
<td>No</td>
</tr>
</tbody>
</table>

**Summary:** Parents never married. Family court granted temporary guardianship to child’s paternal grandmother (May 1998). In January 1999, Family Court awarded custody to mother by consent of the parties. Mother then resided in several places and at various times left the child with the paternal grandmother. In February 2004, grandmother sent the child to Fort Riley where father was stationed, *although he was deployed in Iraq*. Child stayed with father’s wife. Mother was unaware that child was with father, but was eventually contacted and signed a consent that temporary custody and guardianship be transferred to the father. In March, father petitioned for modification of the 1999 custody order. Record contains no proof mother was served and mother was not in court. Family court awarded custody to the father. Formal order was entered in June 2004. Mother filed modification petition on May 17, 2004 seeking custody contending that she only consented to temporary custody. Mother filed a second modification petition and a violation petition and the Law Guardian filed a modification petition on behalf of the child. Following trial, Family Court dismissed mother’s application for modification of the prior order. Mother appealed stating that the June 2004 award of custody to father was improper. Appellate court affirmed grant of custody to servicemember-father.

**CASE DID INVOLVE DEPLOYMENT, BUT SERVICEMEMBER PREVAILED.**

State: New York

<table>
<thead>
<tr>
<th>Initial Custody Determination or Change of Custody Proceeding?</th>
<th>Change of Custody Proceeding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Branch of Armed Forces</td>
<td>Army National Guard</td>
</tr>
<tr>
<td>Was Servicemember Mother or Father?</td>
<td>Mother</td>
</tr>
<tr>
<td>Did Servicemember already have custody?</td>
<td>Yes (joint legal custody, mother primary).</td>
</tr>
<tr>
<td>Did Servicemember lose custody?</td>
<td>Yes (Temporary Custody granted to father and later permanent custody granted to father).</td>
</tr>
<tr>
<td>Did Court mention deployment/prospect of deployment in its ruling?</td>
<td>Yes, along with other factors.</td>
</tr>
</tbody>
</table>

**Summary:** Towne, a New York National Guard member, did not inform the father of her son of her impending deployment to Iraq until less than a month before her deployment date. She had planned to leave the child with her new husband. The child's father sought custody. Towne was present for the initial hearing in which temporary custody was granted to the father, after which the child moved to Virginia with the father. The permanent custody trial was stayed until the mother returned from deployment. The appellate court did not find that her deployment standing alone was sufficient to constitute a change in circumstances requiring a change in physical custody; the court had to consider the consequences of her deployment and the resulting extended absence. The court specifically noted how well the child had done while in his father's custody. A subsequent amendment to New York's domestic relations law (NY Dom. Rel Law §75-l) would have changed the outcome of the case.

The opinion of the Appellate Division indicates that the lack of candor on the part of Towne (the mother) was a significant factor in the outcome adverse to her position. She knew she was going to be deployed and yet she waited until less than a month before her deployment before discussing the issue of custody of the child during her deployment with the father.

**CASE DID INVOLVE DEPLOYMENT, PLUS ADDITIONAL FACTORS ADVERSE TO THE SERVICEMEMBER.**

State: North Carolina.

Initial Custody Determination or Change of Custody Proceeding?

Branch of Armed Forces U.S. Army

Was Servicemember Mother or Father? Both were Army

Did Servicemember already have custody? Father

Did Servicemember lose custody? No

Did Court mention deployment/prospect of deployment in its ruling? No

Summary: Parties separated in May 1998. Child born October 1998. Mother and child left North Carolina for mother to complete military duty assignments. Mother and child visited with father every other weekend. For 3 months in 2000 and 6 months in 2001 the child stayed with father’s mother in North Carolina. In September 2001, mother moved to New Mexico due to military reassignment. In March 2002, mother started having seizures and allowed the child to stay with grandmother until she could control seizures. (Father stationed at Ft. Carson, CO.) In Jan 2003, mother had an allergic reaction to medication and was in a coma until March 2003. The allergic reaction caused blindness. In late May 2003 mother went to visit child at grandmother’s house but was told the father had the child with him in Fayetteville. Mother traveled to Fayetteville, but was not allowed to see the child. Soon after, father and grandmother filed for custody and a temporary custody order was entered granting father and grandmother temporary legal custody. In July 2003, mother moved to Louisiana to live with her mother while she underwent various eye surgeries. On July 26, 2004, a custody order was entered granting the parties joint legal custody with father having primary physical custody and approving physical placement of the child with the grandmother. Mother appealed. Appeal court affirmed award basically due to mother’s health issues.

CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.
**Eifert v. Eifert, 724 N.W. 2d 109 (N.D. Sup. Ct. 2006)**

**State:** North Dakota.

<table>
<thead>
<tr>
<th>Initial Custody Determination or Change of Custody Proceeding?</th>
<th>Initial Custody Determination</th>
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</thead>
<tbody>
<tr>
<td>Branch of Armed Forces</td>
<td>U.S. Air Force</td>
</tr>
<tr>
<td>Was Servicemember Mother or Father?</td>
<td>Mother</td>
</tr>
<tr>
<td>Did Servicemember already have custody?</td>
<td>No</td>
</tr>
<tr>
<td>Did Servicemember lose custody?</td>
<td>No</td>
</tr>
<tr>
<td>Did Court mention deployment/prospect of deployment in its ruling?</td>
<td>No.</td>
</tr>
</tbody>
</table>

**Summary:** After the parties separated in 2001, father moved to Minot and mother remained in Texas until assigned to a base in Honduras. That assignment did not allow family members to accompany service members on official orders. The parties informally agreed to temporarily place the children with the father’s sister, where they remained until 2004. After caring for the children for nearly 4 years, the father’s sister petitioned the district court for permanent co-guardianship of the children, but request was denied. The father then moved the children to his parent’s home in Minot. The parties divorced in 2005 and father was awarded custody. Mother appealed. Appeal court affirmed. Mother had separated from the Air Force by the time of the custody trial.

**CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.**

State: North Dakota

Initial Custody Determination or Change of Custody Proceeding? Change of Custody Proceeding

Branch of Armed Forces U.S. Air Force

Was Servicemember Mother or Father? Father

Did Servicemember already have custody? No

Did Servicemember lose custody? No – he gained custody in a change of custody proceeding.

Did Court mention deployment/prospect of deployment in its ruling? No

Summary: In accordance with the parties’ stipulation in 2000, the parties were divorced and granted joint legal custody of the child with the mother having physical custody. In 2003, father moved to amend the divorce judgment for custody of the child. Mother responded. After a hearing, the district court found that a change in custody was necessary for the best interests of the child. An amended judgment was entered awarding custody to the father. Mother appealed. Appellate court affirmed. Mother was chronically unemployed, secretly remarried and separated, had numerous arrests for criminal mischief and possession of drug paraphernalia, numerous arrests for driving under suspension, without insurance, and exhibition driving.

CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.

State: Ohio

Initial Custody Determination or Change of Custody Proceeding? Initial Custody Determination

Branch of Armed Forces U.S. Army

Was Servicemember Mother or Father? Father

Did Servicemember already have custody? Yes

Did Servicemember lose custody? No – servicemembrere-father was granted custody

Did Court mention deployment/prospect of deployment in its ruling? No – see summary below.

Summary: At divorce trial, father granted custody of child. Mother appealed. Appellate Court affirmed. Review of the record reveals that there was evidence to support each of the trial court’s findings of fact, none of which dealt with the father’s prior overseas service in Germany or his deployment to Iraq before the divorce proceedings were initiated. “Although [mother] now raises the issue of [father’s] current deployment to Iraq, this was not the fact at the time of the hearing and thus is not in the record of proceedings before the trial court and cannot be considered by this court on appeal.”

The appellate court found that there was great animosity between the parents and that neither had been honest during the proceedings. The father was deployed to Iraq after the trial, but the appellate court ruled that was not in the record and could not be considered. Nothing in the opinion indicates who was taking care of the child while the father was deployed.

CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT, SINCE THE FATHER’S DEPLOYMENT OCCURRED AFTER THE TRIAL AND WAS NOT A MATTER IN THE RECORD ON APPEAL.
**Dyslin v. Marks**, 2003 WL 1857108 (Ohio App. 5th Dist. 2003)

<table>
<thead>
<tr>
<th>State:</th>
<th>Ohio</th>
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</thead>
<tbody>
<tr>
<td>Initial Custody Determination or Change of Custody Proceeding?</td>
<td>Change of Custody Proceeding</td>
</tr>
<tr>
<td>Branch of Armed Force</td>
<td>U.S. Air Force active duty (both parents) (not clear from opinion but confirmed by interview with counsel).</td>
</tr>
<tr>
<td>Did Servicemember already have custody?</td>
<td>Yes</td>
</tr>
<tr>
<td>Did Servicemember lose custody?</td>
<td>Custody was modified. Father was named residential parent during school year; mother named the parent during summer.</td>
</tr>
<tr>
<td>Did Court mention deployment/prospect of deployment in its ruling?</td>
<td>No – military duties not a factor in court’s ruling.</td>
</tr>
</tbody>
</table>

**Summary:** Marriage dissolved in 1997 via Amended Stipulated Final Decree and Parenting Plan. The Plan granted parties shared joint legal custody. In 1998, father sent to Korea to serve a one-year remote tour. The child resided with the mother in Florida until August 1999. Upon completion of his Air Force commitment, father moved to Ohio. Child remained with mother in Florida. In March 2000, mother joined Air Force. Upon agreement of the parties, child moved to Ohio with father so mother could complete basic training and 7 months of technical school. Child returned to the mother for the summer. Mother completed basic training, but tech school was postponed until August 2000. Father renewed agreement to care for child until mother completed school. The child began school in Ohio and visited the mother in Florida over the Christmas break. When the child returned to Ohio, father informed mother he would not honor agreement to return child. August 2001, mother filed a complaint asking the court to adopt and enforce the Shared Parenting Agreement and grant mother custody. Father filed a complaint for custody. Trial court ordered mediation. No agreement. July 22, 2002, trial court ordered shared parenting in Ohio and designed father as residential parent during school year and mother residential parent during summer. Mother appealed. Appellate Court affirmed.

**CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.**
**Shaffer v. Shaffer, 2005 WL 1797739 (Ohio App. 3 Dist. 2005)**

State: Ohio

<table>
<thead>
<tr>
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<th>Initial Custody Determination</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Branch of Armed Forces</strong></td>
<td>U.S. Navy</td>
</tr>
<tr>
<td><strong>Was Servicemember Mother or Father?</strong></td>
<td>Father</td>
</tr>
<tr>
<td><strong>Did Servicemember already have custody?</strong></td>
<td>No</td>
</tr>
<tr>
<td><strong>Did Servicemember lose custody?</strong></td>
<td>No – he was awarded custody.</td>
</tr>
<tr>
<td><strong>Did Court mention deployment/prospect of deployment in its ruling?</strong></td>
<td>No</td>
</tr>
</tbody>
</table>

**Summary:** Mother filed complaint for divorce on August 6, 2004. *Ex parte* order was entered designating mother residential parent of the child. On August 9, 2004, father filed a counterclaim and a motion to vacate *ex parte* order. Hearing held on father’s motion on August 12, 2004. (At hearing, trial court was made aware that father was serving in the Navy and that his mother would be willing to assume care for the child.) The trial court vacated the *ex parte* order and designated father residential parent. Since father was on active duty, the court approved placement of the child with father’s mother. Final divorce hearing on November 17, 2004. Father remained residential parent as child had been subjected to neglect and abuse by the mother. Mother appealed. Appellate court affirmed.

**CASE DID INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT AND COURT APPROVED PLACEMENT OF THE CHILD WITH SERVICEMEMBER-FATHER’S MOTHER.**

State: Tennessee

<table>
<thead>
<tr>
<th>Initial Custody Determination or Change of Custody Proceeding?</th>
<th>Initial Custody Determination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Branch of Armed Forces</td>
<td>U.S. Navy</td>
</tr>
<tr>
<td>Was Servicemember Mother or Father?</td>
<td>Mother</td>
</tr>
<tr>
<td>Did Servicemember already have custody?</td>
<td>Mother granted custody at trial, father appealed.</td>
</tr>
<tr>
<td>Did Servicemember lose custody?</td>
<td>Appeal court reversed trial court and granted custody to father.</td>
</tr>
<tr>
<td>Did Court mention deployment/prospect of deployment in its ruling?</td>
<td>No, but did discuss frequent military transfers.</td>
</tr>
</tbody>
</table>

**Summary:** Mother granted custody after a two-day trial in 2001. Father appealed. While appeal was pending, father filed a motion to consider post-judgment facts (mother had requested court permission to move child to England; mother had remarried -- after denying at trial any romantic relationship -- and new husband was in Navy as well.) Motion granted. Appellate court reversed trial court and granted father custody. Appellate court stated that as a result of Mother’s disingenuous denial of a relationship with Stallings [the new husband], the effect of that relationship on the child could not be fully examined at trial. Further, mother’s marriage to a spouse also in the military clearly makes frequent moves, and resulting disruption to the child, even more likely and makes father’s visitation with the child more difficult and infrequent. Mother’s pending request to transfer to England with new husband undermines the considerations most emphasized by the trial court in its decision, namely, the benefit of the child being permitted to continue her life in the same surroundings and the importance of the child having maximum exposure to the father.

**CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT. HOWEVER COURT DID BASE DECISION, IN PART, ON FREQUENT MOVES REQUIRED BY MILITARY PARENTS.**

**State:** Tennessee

<table>
<thead>
<tr>
<th>Initial Custody Determination or Change of Custody Proceeding?</th>
<th>Initial custody determination in divorce action.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Branch of Armed Forces</td>
<td>U.S. Army</td>
</tr>
<tr>
<td>Was Servicemember Mother or Father?</td>
<td>Mother</td>
</tr>
<tr>
<td>Did Servicemember already have custody?</td>
<td>No – initial determination of custody.</td>
</tr>
<tr>
<td>Did Servicemember lose custody?</td>
<td>No – she was not awarded custody.</td>
</tr>
<tr>
<td>Did Court mention deployment/prospect of deployment in its ruling?</td>
<td>No</td>
</tr>
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</table>

**Summary:** At divorce hearing, father granted a divorce due to inappropriate marital conduct by the mother. The parties were granted joint custody of the child with father having primary physical custody. Mother appealed. (Mother’s one relevant argument regarding custody of the child is that the court ruled against her because she is a soldier on active duty with the U.S. Army. “But the evidence she cites for this proposition, that the court recited the proof showing that she has to be at physical training at 6:30 in the morning, reflects a scheduling issue not a career choice issue. It would have equal weight in a non-military setting”). Appellate court affirmed award of custody to father, who had provided most of the parenting for the child for the entire time of the marriage.

**CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.**

**State:** Wisconsin

<table>
<thead>
<tr>
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<th>Change of Custody Proceeding</th>
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</thead>
<tbody>
<tr>
<td><strong>Branch of Armed Forces</strong></td>
<td>U.S. Army</td>
</tr>
<tr>
<td><strong>Was Servicemember Mother or Father?</strong></td>
<td>Father, but he had been discharged by the time of trial.</td>
</tr>
<tr>
<td><strong>Did Servicemember already have custody?</strong></td>
<td>No</td>
</tr>
<tr>
<td><strong>Did Servicemember lose custody?</strong></td>
<td>No – the father was granted custody.</td>
</tr>
<tr>
<td><strong>Did Court mention deployment/prospect of deployment in its ruling?</strong></td>
<td>No</td>
</tr>
</tbody>
</table>

**Summary:** By stipulation, order was entered October 20, 1999 providing for joint legal custody with primary physical placement with mother. In January and April 2000, orders were entered upon parties’ stipulation that primary placement would be with father in New York where he was serving in the Army. March 2001, mother moved for sole legal custody and primary physical placement. Upon the parties’ stipulation, order entered June 24, 2002 with the parties retaining joint legal custody, the mother having primary physical placement and the father having primary physical placement for seven weeks during summer vacation and one week at both Christmas and Easter. On May 13, 2003, father sought order for sole legal custody and primary placement of the child. Father had been discharged from the Army on February 1, 2003. After a hearing, court found that the conditions with mother were physically and emotionally harmful to the child and granted father sole legal custody and primary physical placement. Mother appealed. Appellate court affirmed the award of custody to the father. The mother had documented mental health problems and diagnosed personality disorders.

**CASE DID NOT INVOLVE DEPLOYMENT OR PROSPECT OF DEPLOYMENT.**
The Honorable Michael R. Turner  
U.S. House of Representatives  Washington, DC 20515-0910

Dear Representative Turner:

I write in response to your letters regarding federal legislation to provide protections to our Service members in child custody cases. Thank you for your interest in our military families and your particular interest in the child custody issues our Service members may face as a result of their deployments. I personally share your concern. As you will recall, during my testimony on May 13 before the House Armed Services Committee when you asked me about this, I said “I’m opposed to anything that disadvantages our men and women in uniform solely because of their service.”

In response to the New York Times story about Specialist Mendoza and your most recent letter, I asked my staff to take a fresh look at this issue. Our General Counsel has reviewed the various state law protections for Service members. We find that, at present, some level of protection for Service members facing child custody issues exists in approximately 28 states, but the states’ approaches to the issue vary widely. Many of these variances no doubt reflect different societal dimensions of the problem in different communities across the country. Thus, we have concluded that it would be unwise to push for federal legislation in an area that is typically a matter of state law concern.

However, we have identified a number of steps that the Department of Defense should take in this area:

First, I plan to personally contact the governors of each of the states that have yet to pass legislation addressing the special considerations of child custody cases in the military to urge them to pass such legislation. I will also ask the Chief of the National Guard Bureau to follow up with the Adjutant General of each of those states on the issue.

Second, we will include concerns over child custody matters on the list of the Department’s 10 Key Quality of Life Issues that will be presented to governors, state legislators and other state officials. On September 22, a representative from the Department’s Office of Legal Policy and an expert in military child custody cases met with each of the Department’s ten Regional State Liaisons and discussed military child custody issues. These liaisons will now aggressively reach out to state officials whose
legislatures have not addressed military custody concerns to provide them with appropriate and effective draft language. Further, the liaisons developed a general strategy for focusing on those states with the largest military populations.

Third, I will ask the military service Judge Advocates General and Staff Judge Advocate to the Commandant to ensure they are doing all they can to work with the American Bar Association (ABA) to publicize, emphasize and support the ABA’s national pro bono project. This project can provide our Service members free legal representation from some of the country's most accomplished child custody practitioners. The pro bono project is run in concert with judge advocates from each of the Services, who work closely with the ABA to ensure our Service members receive the best possible representation.

Fourth, the Department is engaged with the military services to update and standardize Family Care Plans (FCPs) across the services. FCPs are developed to ensure that families are taken care of during times of drills, annual training, mobilization and deployment. FCPs include provision for long-term and short-term care, care and support for children, and financial arrangements including power(s) of attorney. The Department has recognized that improvements to its FCP guidance can address many of the custody issues that otherwise too often result in litigation after deployment. By clarifying those who require a FCP and emphasizing the importance of custody negotiations with the non-custodial parent early in the process—before deployment—the issues that most often give rise to litigation can largely be avoided. The Department is convinced that these efforts can resolve far more issues in favor of our Service members than can new federal legislation.

I assure you that the Department of Defense is proactively working to resolve any inequitable treatment faced by our deployed soldiers, sailors, airmen and Marines in child custody disputes as a result of their service to the Nation. The Department will also continue to work with your office to address this important issue.

Sincerely,

[Signature]

cc:
The Honorable Carl Levin, Chairman, Senate Armed Services Committee
The Honorable John McCain, Ranking Member, Senate Armed Services Committee
The Honorable Ike Skelton, Chairman, House Armed Services Committee
The Honorable Howard McKeon, Ranking Member, House Armed Services Committee
AN ACT

To authorize appropriations for fiscal year 2010 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

1  Be it enacted by the Senate and House of Representa-
2  tives of the United States of America in Congress assembled,
including the need for legislative or administrative
action to provide such assistance.

(8) Such other recommendations for legislative
or administrative action as the Secretary considers
appropriate.

SEC. 556. SENSE OF SENATE ON PREPARATION AND CO-
ORDINATION OF FAMILY CARE PLANS.

(a) FINDINGS.—The Senate makes the following
findings:

(1) Family Care Plans provide a military tool
to document the plan by which members of the
Armed Forces provide for the care of their family
members when military duties prevent members of
the Armed Forces from doing so themselves. Properly prepared Family Care Plans are essential to
military readiness. Minimizing the strain on mem-
ers of the Armed Forces of unresolved, challenged,
or voided child custody arrangements arising during
deployments or temporary duty directly contributes
to the national defense by enabling members of the
Armed Forces to devote their entire energy to their
military mission and duties.

(2) When Family Care Plans are properly pre-
pared and coordinated with all affected parties, the
legal difficulties that may otherwise arise in the ab-
sense of the military custodial parent often can be minimized, if not eliminated.

(b) SENSE OF SENATE.—It is the sense of the Senate that—

(1) the responsibility for establishing workable and legally supportable Family Care Plans lies with the members of the Armed Forces;

(2) notwithstanding that responsibility, commanders should—

(A) ensure that the members of their command fully understand the purpose of the Family Care Plan and its limitations, including the overriding authority of State courts to determine child custody arrangements notwithstanding a Family Care Plan;

(B) understand and emphasize to their members that failure to involve, or at least inform, the non-custodial parent of custody arrangements in anticipation of an absence can undermine the Family Care Plan or even render it useless, in such cases; and

(C) apprise their members of the risks described in subparagraph (B), and strongly encourage them to seek legal assistance, as far in advance of actual absences as practicable;
(3) the Secretary of Defense, and the Secretary of Homeland Security with respect to matters concerning the Coast Guard when it is not operating as a service in the Navy, should ensure that members of the Armed Forces update their Family Care Plans and emphasize—

(A) the importance of prior planning;

(B) that Family Care Plans are necessary not only for the single parent and for the dual military couple but also for a married member of the Armed Forces who has custody of a child pursuant to a court order or separation agreement or who has custody of a child whose other parent is not the current spouse of the member;

(C) that in spite of how important Family Care Plans are to readiness, they are not legal documents that can change a court-mandated custodial arrangement or interfere with the other parent’s right to custody of his or her child;

(D) that, to the greatest extent possible, a member of the Armed Forces should inform the other parent of the member’s impending absence due to military orders if such absence prohibits the member from fulfilling the mem-
ber's custody responsibilities and inform that
other parent of the Family Care Plan;

(E) that a member of the Armed Forces
should attempt to obtain the consent of the
non-custodial or adoptive parent to any Family
Care Plan that would leave the child in the care
of a third party; and

(F) that if a member of the Armed Forces
cannot or will not contact the non-custodial
parent or cannot obtain that parent's consent
to the Family Care Plan, the commander of the
member should—

(i) counsel the member about the im-
plications; and

(ii) encourage in the strongest possi-
bile terms that the member seek imme-
diate help from a legal assistance attorney
or other qualified legal counsel; and

(4) attorneys providing legal assistance as de-
scribed in paragraph (3)(F)(ii) should provide mem-
bers of the Armed Forces a full explanation of the
dangers of not involving the non-custodial parent
and discuss appropriate courses of action.
ABOUT THE MILITARY PRO BONO PROJECT

Extended American military missions overseas have generated unprecedented civil-law challenges for servicemembers, many of whom have left family, home, and job for years at a time to serve their country in Iraq, Afghanistan, and other locations.

Our servicemembers are increasingly faced with legal needs that distract them from their mission and can make their already difficult daily lives even more challenging. These needs are arising in the areas of consumer law, family law, landlord-tenant, employment law, and other areas. Their families often unfortunately require assistance in the area of probate, trusts and estates, or guardianship law.

The ABA Military Pro Bono Project is directly helping servicemembers who are sacrificing greatly for their country by matching pro bono referrals from military law offices with willing-and-able private sector lawyer volunteers throughout the country. Military attorneys use the Project’s web-based referral system to submit pro bono case placement requests for representation, and volunteer pro bono attorneys register with the website to offer their services in their geographic and substantive areas of their expertise. Unlike several legal service programs that have surfaced to assist veterans, the Military Pro Bono Project is uniquely focused on provision of pro bono services to active-duty servicemembers, many of whom remain deployed to areas of conflict.

This pamphlet gives an overview of how military and pro bono attorneys can get involved with the ABA Military Pro Bono Project so that, working together, we can ensure access to justice for military personnel and their families who have sacrificed so much for all of us.

To join our effort to meet the pro bono legal needs of servicemembers, visit www.militaryprobono.org and register to GET INVOLVED.
THE MILITARY PRO BONO PROJECT IS A RESOURCE THAT MILITARY LEGAL ASSISTANCE ATTORNEYS MAY USE TO OBTAIN PRO BONO LEGAL REPRESENTATION FOR THEIR CLIENTS. THE PROJECT ALSO PROVIDES AN OPPORTUNITY FOR CIVILIAN ATTORNEYS TO VOLUNTEER THEIR TIME TO HANDLE CASES FOR ACTIVE-DUTY SERVICEMEMBERS ON A PRO BONO BASIS.

WHERE PROJECT CASES COME FROM:
All cases originate with a referring attorney in a military legal assistance office. The military attorney interviews the client, collects substantive case information, and screens for income eligibility, as most referred clients will typically have a paygrade of E6 or lower. The attorney will also determine whether the case is legally meritorious and has adequate cause for referral based on an analysis of a number of qualitative factors. Once submitted through the Project's web-based referral form, the case will be reviewed by a designated military supervising attorney for merit and completeness. Thus, participating firms can be assured that only those cases that have been fully worked up and are factually and legally meritorious will be offered as pro bono opportunities.

SUBSTANTIVE LEGAL CASE TYPES:
Specific case-type guidelines are found on the Project's website, www.militaryprobono.org.
Cases that will typically be accepted for pro bono placement through the Project are:

EMPLOYMENT
- Including cases under USERRA or EEOC complaints.

LANDLORD/TENANT
- Representation for tenants only, in all manner of landlord/tenant disputes, including wrongful termination of tenancy.

GUARDIANSHIP
- Generally providing representation to a current spouse or parent to secure guardianship of a disabled servicemember.

FAMILY LAW
- Representation for servicemembers in limited types of disputed family law proceedings where important interests of the servicemember, such as custody, are affected.

HOW TO GET INVOLVED:
Military and pro bono attorneys may register at the Project website at www.militaryprobono.org by clicking the "Join this Area" link. Once registration is approved, military attorneys will have access to the online form that will allow for submission of case referrals, and pro bono attorneys will receive requests for volunteers via email when a servicemember has a case in that attorney's geographic and substantive legal areas of expertise. Both military and pro bono attorneys will also have access to their cases via the site's online case management system where they can provide notes regarding their cases, upload documents, and communicate with other attorneys involved in the case.

If you have questions or need additional information or guidance, please visit the Project website, www.militaryprobono.org, or contact ABA Military Pro Bono Project at militaryprobono@staff.abanet.org.
Subject: Protection of Child Custody Arrangements for Parents Who are Members of the Armed Forces Deployed in Support of a Contingency Operation

Appeal Citation: H.R. 2647, sec. 584

Language/Provision: This section would amend 50 U.S.C. App. § 521 et seq. (The Servicemembers Civil Relief Act (SCRA)) by adding a new section to prevent a court from modifying or changing an existing order or issuing a new order that changes a child custody arrangement that existed on the date of a Servicemember's deployment in support of a contingency operation, unless such modification or change was in the child's best interest. In addition, the previous custody arrangement would be reinstated upon the return of the deployed Servicemember. Also, upon the end of a deployment, no court would be allowed to consider the Servicemember's absence by reason of that deployment in determining the best interests of the child.

DoD Position/Impact: The Department opposes section 584. This proposal, which has been included in substantially the same form for the last three legislative sessions, would disrupt State domestic schemes, discourage passage of broader, more helpful State laws, and increase cost, delay, and uncertainty due to increased oversight by the Federal courts. The Department applauds the efforts by almost thirty States to pass legislation that addresses the special circumstances facing parents who have dropped their own affairs to take up the burdens of the nation, and encourages the remaining States to consider similar legislation. The Department also recognizes the complexities of such cases, and the difficulties in balancing the interests of the Servicemember against the best interest of the child and the consequences of a parent's absence due to military service. The States, however, are in the best position to balance these equities within the context of their domestic relations laws. To complement the exceptional efforts of the States, DoD is revamping its Family Care Plan (FCP) guidance to the Services, further obviating the need for this legislation.

Federal Question Jurisdiction:

Although changes to the current proposal from those previously offered would likely prevent Federal courts from actually hearing child custody disputes, the risk of Federal court oversight of State implementation of Federal law still creates an unacceptable risk of stress and disruption on our Servicemembers who would face increased cost, delay, and uncertainty in litigating these matters in both State and Federal courts. Such stress and disruption impact mission readiness, which is obviously a matter of the highest importance to the Department of Defense.

State Authority and Expertise:

Matters of child custody have traditionally been reserved to the States. The States have the expertise, experience, and the social service resources to best legislate in this area, and manage any unique military circumstances that may affect such determinations.

State Laws:

Approximately twenty-nine States have recognized the potential competing interests of the child and the custodial Servicemember, and have passed specific legislation designed to balance those
interests. Many of these acts and bills create an expansive, in-depth system to address unique State concerns within an already intricately designed State system. Many States are addressing issues beyond those in this proposal and passing comprehensive statutes that address other important aspects of child custody, such as delegation of visitation rights, authority for expedited hearings, and expanded use of video conferencing. The Department is concerned that a one-size-fits-all Federal standard—even of limited scope—may not only disrupt current State schemes, but would also serve as a disincentive for consideration of more helpful legislation.

The progress with which the States have embraced these military-specific issues has been phenomenal and shows no indication of waning. Seven military custody bills have become law since we commented on a similar legislative proposal last year. It would be a mistake to intrude on the significant protections enacted and creativity demonstrated by the States.

To encourage the remaining 22 States to follow the lead of the other 28, the Department has directed that child custody matters be included on the list of the Department’s 10 Key Quality of Life Issues, which will be presented to the Governors, State legislators, and other State officials.

**Adverse Impact on SCRA:**

Apart from the disruption occasioned by the risk of Federal oversight of the State court process, the adverse impact on the SCRA itself could be significant. One possible impact would be the inference that by legislating in the narrow area of “judgment cases” (those where there has already been a court’s involvement and prior order or direction), the greater majority of cases—those without court involvement—would appear to be excluded. Furthermore, the application of the SCRA to other areas of domestic law, such as support and visitation, might be excluded. This would create a potentially dizzying set of rules and forums depending upon arbitrarily established distinctions in timing, prior court involvement, and the specific aspect of domestic relations at issue.

The limitation of House section 584 to those cases involving the motions brought after deployment in support of a contingency operation—a term that will not be well understood in State courts—creates another arbitrarily created distinction between those involved in a contingency operation and those who must be absent from their child for other military-directed reasons. Why should the deployment of a Servicemember in support of a combat operation, as opposed to a humanitarian operation, be forced to operate under different laws and perhaps in different courts? Few other provisions of the SCRA turn on such arbitrarily-imposed distinctions.

**SCRA Protections Currently Available:**

The SCRA currently provides powerful rights to mobilized custodial caregivers. A number of high-visibility custody cases have resulted in custody decisions adverse to deployed Servicemembers; however, in many of these cases the basic and generally easily met prerequisites for automatic 90-day stays under the SCRA were not followed. In other cases, judges simply ignored the SCRA or it was not properly pled. This indicates a problem of a lack of education about the effect and use of the SCRA rather than a problem with its substantive limitations. To address failures of State courts to follow the SCRA’s explicit terms, and implement its significant and strong protections, by passing laws such as section 584 could suggest that the SCRA does not currently mean what it says with respect to these and other areas of family law.

**Family Care Plans:**
The Department has recognized that improvements to its Family Care Plan (FCP) regulation can address many of the issues that otherwise too often result in custody litigation arising after deployment. By clarifying those who require an FCP and emphasizing the importance of custody negotiations with the non-custodial parent early in the process before deployment, the issues that have too frequently resulted in litigation can be obviated. The Department is convinced that these efforts, in conjunction with the significant protections already available under the SCRA, will resolve far more issues in favor of parents who are Servicemembers than will additional Federal legislation, and our ongoing efforts will do so without the risks discussed above.

**Conclusion:**

Although mindful of the impact that child custody issues could have on the readiness of mobilized Servicemembers, the Department urges that House section 584 not be included in the final National Defense Authorization Act. The need for this legislation should be examined from the perspective of pending and recently enacted State legislation, and the Department’s current FCP initiatives. Through its State liaison program the Department believes it can encourage many of the remaining States to provide basic protections that would not run the risk of unintentionally undermining current SCRA protections, and disrupting the carefully crafted State systems that have handled child custody cases well and efficiently for many years.

Statement of Colonel Shawn Shumake, USA

Director, Office of Legal Policy
Office of the Under Secretary of Defense (Personnel and Readiness)
Program Integration and Legal Policy
U.S. Department of Defense

Chairwoman Herseth Sandlin and Members of the Subcommittee, thank you for extending the invitation to the Department of Defense to address H.R. 3976 and H.R. 4469.

H.R. 3976

This bill would amend Section 2203(c)(2) of the Housing and Economic Recovery Act of 2008 (HERA) (Public Law 110-289) by extending the sunset provision of the foreclosure protections of section 303 of the Servicemembers Civil Relief Act (SCRA), Public Law 108-189 (2003) (50 USC App. §§ 501-596) from January 1, 2011, to January 1, 2016. Currently, a servicemember’s obligation on real or personal property secured by a pre-service mortgage or mortgage type obligation may not be foreclosed on for nine months after leaving active duty, absent a valid court order. Also certain delay provisions for court actions involving such mortgages are also in effect for the same nine-month period. Under the proposed change, these nine-month periods would not revert to the previous 90-day periods until January 1, 2016.

The Department supports H.R. 3976.

H.R. 4469

This bill would add new sections to the Servicemembers Civil Relief Act (SCRA), Public Law 108-189 (2003) (50 USC App. §§ 501-596) and establish one-size-fits-all Federal child custody legislation. The Department opposed similar legislation in the FY08 and FY09 House National Defense Authorization bills and formally appealed identical legislation in the FY10 House National Defense Authorization bill. Although we appreciate the goals of this legislation, and the efforts of its proponents to support our servicemembers, our concerns and opposition remain.

Federal efforts to legislate matters of child custody would disrupt State domestic schemes; discourage passage of broader, more helpful State laws; and increase, cost, delay, and uncertainty due to increased

Federal oversight of the State courts. The Department recognizes the complexities of such cases and the
difficulties in balancing the interests of the servicemember against the best interest of the child, as
impacted by the parent's absence due to military service. The Department believes that the States are in
the best position to balance these interests within the context of their own domestic relations laws.

The Department applauds the efforts by the more than 30 States that have already passed legislation
addressing the special circumstances facing military parents who have dropped their own affairs to take
up the burdens of the nation. Working through its State Liaison program, the Department can report
remarkable progress just since last September: about 15 of the remaining States are currently actively
considering specific military specific child custody legislation and there is general interest in similar
legislation in several more States.

Apart from the disruption to the State laws already in effect and those currently under consideration, the
risk of requests for Federal court oversight of the State implementation of Federal child custody law
creates an unacceptable risk of stress and disruption for our servicemembers who would face increased
cost, delay, and uncertainty in litigating these matters both in State and Federal court. Such stress, cost,
and disruption would exacerbate already difficult circumstances.

In addition, H.R. 4469's focus solely on "judgment cases" (i.e., where custody has already been granted
by a court) brought during a contingency operation is arbitrarily narrow and would be better handled by
the Department's ongoing efforts to redraft its Family Care Plan (FCP) Instruction. The Department has
recognized that improvements to its FCP Instruction can address many of the issues that otherwise might
result in custody litigation arising after deployment. By expanding the categories of servicemembers
who require an FCP and emphasizing the importance of custody negotiations with the non-custodial
parent early in the process before deployment, the risk of litigation can be greatly lessened. The
Department is convinced that these efforts, in conjunction with the significant protections already
available under the SCRA and provided by the States, will resolve far more issues in favor of parents
who are Servicemembers than will additional Federal legislation—and will do so without the risks
discussed above.

Subcommittees

- Disability Assistance and Memorial Affairs
- Economic Opportunity
- Health
- Oversight and Investigations

House Committee on Veterans' Affairs
335 Cannon House Office Building
Washington, D.C. 20515
(202) 225-9756

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An Act

To authorize appropriations for fiscal year 2010 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Defense Authorization Act for Fiscal Year 2010".

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into five divisions as follows:

(1) Division A—Department of Defense Authorizations.
(2) Division B—Military Construction Authorizations.
(3) Division C—Department of Energy National Security Authorizations and Other Authorizations.
(4) Division D—Funding tables.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Organization of Act into divisions; table of contents.
Sec. 3. Congressional defense committees.

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

Sec. 101. Army.
Sec. 102. Navy and Marine Corps.
Sec. 103. Air Force.
Sec. 104. Defense-wide activities.
Sec. 105. National Guard and Reserve equipment.
Sec. 106. Mine Resistant Ambush Protected Vehicule Fund.
Sec. 107. Relation to funding table.

Subtitle B—Army Programs

Sec. 111. Procurement of Future Combat Systems spin out early-infantry brigade combat team equipment.

Subtitle C—Navy Programs

Sec. 111. Littoral Combat Ship program.
Sec. 112. Treatment of Littoral Combat Ship program as a major defense acquisition program.
Sec. 113. Report on strategic plan for homeporting the Littoral Combat Ship.
H.R. 3547—128

(6) The impact that deployment of a military parent or parents has on risk factors, such as child abuse, child neglect, family violence, substance abuse by children, or parental substance abuse.

(7) Such other matters as the Secretary considers appropriate.

(c) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the results of the assessment undertaken under subsection (a), including the findings and recommendations of the Secretary as a result of the assessment.

SEC. 527. REPORT ON CHILD CUSTODY LITIGATION INVOLVING SERVICE OF MEMBERS OF THE ARMED FORCES.

(a) REPORT REQUIRED.—Not later than March 31, 2010, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on all known reported cases since September 2003 involving child custody disputes in which the service of a member of the Armed Forces, whether a member of a regular component of the Armed Forces or a member of a reserve component of the Armed Forces, was an issue in the custody dispute.

(b) ELEMENTS.—The report required by subsection (a) shall include the following:

(1) A statement of the total number of cases, by Armed Forces, in which members of the Armed Forces have lost custody of a child as a result of deployment, or the prospect of deployment, under military order.

(2) A summary of applicable Federal law pertaining to child custody disputes involving members of the Armed Forces.

(3) An analysis of the litigation history of all available reported cases involving child custody disputes in which the deployment of a member of the Armed Forces was an issue in the dispute, and a discussion of the rationale presented by deciding judges and courts of the reasons for their rulings.

(4) An assessment of the nature and extent of the problem, if any, for members of the Armed Forces who are custodial parents in being able to deploy and perform their operational mission while continuing to fulfill their role as parents with sole or joint custody of minor children.

(5) A discussion of measures being taken by the States, or which are under consideration by State legislatures, to address matters relating to child custody disputes in which one of the parties is a member of the Armed Forces, and an assessment of whether State legislatures and State courts are cognizant of issues involving members of the Armed Forces with minor children.

(6) A discussion of Family Care Plan policies aimed at ensuring that appropriate measures are taken by members of the Armed Forces to avoid litigation in child custody disputes.

(7) Such recommendations as the Secretary considers appropriate regarding how best to assist members of the Armed Forces who are single, custodial parents with respect to child custody disputes in connection with the performance of military duties, including the need for legislative or administrative action to provide such assistance.
(8) Such other recommendations for legislative or administrative action as the Secretary considers appropriate.

SEC. 572. COMPTROLLER GENERAL REPORT ON CHILD CARE ASSISTANCE FOR MEMBERS OF THE ARMED FORCES.

(a) In General.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on financial assistance for child care provided by the Department of Defense to members of the Armed Forces (including members of the reserve components of the Armed Forces who are deployed in connection with a contingency operation).

(b) Elements.—The report required by subsection (a) shall include an assessment of the following:

(1) The types of financial assistance for child care made available by the Department of Defense to members of the Armed Forces (including members of the reserve components of the Armed Forces who are deployed in connection with a contingency operation).

(2) The extent to which such members have taken advantage of such assistance since such assistance was first made available.

(3) The formulas used for calculating the amount of such assistance provided to such members.

(4) The funding allocated to such assistance.

(5) The remaining costs of child care to families of such members that are not covered by the Department of Defense.

(6) Any barriers to access to such assistance faced by such members and the families of such members.

(7) The different criteria used by different States with respect to the regulation of child care services and the potential impact differences in such criteria may have on the access of such members to such assistance.

(8) The different standards and criteria used by different programs of the Department of Defense for providing such assistance with respect to child care providers and the potential impact differences in such standards and criteria may have on the access of such members to such assistance.

(9) The number of qualified families that do not receive any financial assistance for child care made available by the Department of Defense.

(10) Any other matters the Comptroller General determines relevant to the improvement of financial assistance to expand access for child care made available by the Department of Defense to members of the Armed Forces (including members of the reserve components of the Armed Forces who are deployed in connection with a contingency operation).

Subtitle H—Military Voting

SEC. 575. SHORT TITLE.

This subtitle may be cited as the "Military and Overseas Voter Empowerment Act".
NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2010

CONFERENCE REPORT

TO ACCOMPANY

H.R. 2647

OCTOBER 7, 2009.—Ordered to be printed
The Senate recedes with an amendment that would require a report to the Committees on Armed Services of the Senate and the House of Representatives, not later than 180 days after enactment of this Act, on international intrafamilial abduction of children of members of the armed forces and an assessment of assistance available to parents of abducted children, measures taken to prevent abduction of children of military personnel, and education available to military parents on the risks of international intrafamilial child abduction.

Assessment of impact of deployment of members of the Armed Forces on their dependent children (sec. 571)

The Senate amendment contained a provision (sec. 554) that would require the Secretary of Defense to undertake a comprehensive assessment of the impact of deployment on dependent children and adolescents of military service members. The provision would also require the Secretary to conduct a review of the mental health care and counseling services available to children of service members; whether the status of a service member as active duty or reserve affects the access of a military child to such services; and whether and to what extent waiting lists, geographic distance, and other factors may obstruct military children's receipt of such services.

The House bill contained no similar provision.

The Senate recedes with an amendment that would require the Secretary also to address children of deployed service members in families in which one parent is in the armed forces, both parents are in the armed forces, and the service member is a single parent.

The conferees note that the requirement for the Secretary to review the mental health care and counseling services available to dependent children is addressed elsewhere in this Act.

Report on child custody litigation involving service of members of the Armed Forces (sec. 572)

The House bill contained a provision (sec. 584) that would amend title II of the Servicemembers Civil Relief Act (50 U.S.C. 521 et seq.) to provide that if a motion for change of custody of a child of a service member is filed while the service member is deployed in support of a contingency operation, no court may enter an order modifying or amending any previous judgment or order, or issue a new order, that changes custody arrangements for that child that existed as of the date of the deployment of the service member, except that a court may enter a temporary custody order if the court finds that it is in the best interest of the child. The provision would also preclude a court from considering the absence of a service member by reason of deployment, or possibility of deployment, in determining the best interest of the child.

The Senate amendment contained a provision (sec. 555) that would require the Secretary of Defense to submit to the Committees on Armed Services of the Senate and the House of Representatives, not later than June 1, 2010, a report on reported judicial cases involving child custody disputes in which the service of a deployed or deploying member of the armed forces, active or reserve, was an issue in a child custody dispute.
The House recedes with an amendment that would change the
date for the report on judicial cases involving child custody
disputes to March 31, 2010.

The conferees believe that actions need to be taken by the Secre-
try of Defense and by military leaders and legal assistance
personnel to assist in preventing, where possible, legal disputes over
child custody involving military members who are custodial par-
ents.

The conferees have raised concerns in previous conference
agreements since 2008 that service members who have been award-
ed custody of minor children but who are required to deploy in de-
fense of the Nation or be absent from their children as a result of
their military duties are vulnerable to litigation by non-custodial,
biological parents. The conferees believe that providing assistance
and education regarding measures service members can take in ad-
vance of deployment to prevent child custody disputes will serve to
prevent many lawsuits and minimize the distraction of having to
fight to retain custody of children while our service members are
deployed. Further, the conferees are concerned that service mem-
ers faced with the risk of losing custody of children as a result of
military service may opt to leave the military, and potential re-
cruits may choose not to join a military service.

The conferees commend the several States that have enacted
legislation to address child custody circumstances that arise from
the current demands of military service.

The conferees believe that the Secretary of Defense must also
take steps to assist deployed members of the armed forces in child
custody disputes that arise as a result of their military service. Al-
though the Secretary has concluded that it would be unwise to
push for federal legislation in an area that is typically a matter of
state law concern, he did identify several steps that the Depart-
ment should take to address this issue.

The conferees commend the Secretary for his initiative, and
ask that he report to the Committees on Armed Services of the
Senate and the House of Representatives not later than 180 days
after enactment of this Act on the measures the Department has
taken to prevent child custody litigation involving military mem-
ers who are custodial parents to include contacting the governors
of each of the States that have yet to pass legislation addressing
the special considerations of child custody cases in the military to
urge them to pass such legislation, asking the Chief of the National
Guard Bureau to follow up with the Adjutant General of those
States on the issue of child custody in the military, including con-
cerns over child custody matters on the list of 10 key quality of life
issues that will be presented to governors, outreach activities by
the Department of Defense Regional State Liaisons with States
whose legislatures have not addressed military custody concerns,
efforts by the Judge Advocate General of the Army, Navy, and Air
Force and the Staff Judge Advocate to the Commandant of the Ma-
rine Corps to work with the American Bar Association to publicize
and support the national pro bono project of the American Bar As-
sociation, and engaging with the military services to update and
standardize the family care plans to provide for long-term and
short-term care, care and support for children, and financial ar-
rangements including power of attorney when the service members are deployed. The conferees request a second and final report assessing the effectiveness of these actions no later than 1 year after the initial report.

Comptroller General report on child care assistance for members of the Armed Forces (sec. 573)

The Senate amendment contained a provision (sec. 561) that would require the Comptroller General to submit a report on financial assistance for child care provided by the Department of Defense to members of the reserve components who are deployed in connection with a contingency operation.

The House bill contained no similar provision.

The House recedes with an amendment that would expand the scope of the report to include an assessment of the financial assistance for child care provided to all active-duty service members, as well as to members of the reserve components who are deployed in connection with a contingency operation.

Subtitle H—Military Voting

Short Title (sec. 575)

The Senate amendment contained a provision (sec. 581) that would cite this subtitle as the "Military and Overseas Voter Empowerment Act".

The House bill contained no similar provision.

The House recedes.

Clarification regarding delegation of State responsibilities to local jurisdictions (sec. 576)

The Senate amendment contained a provision (sec. 583) that would authorize a State to delegate its responsibilities in carrying out the requirements under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) imposed as a result of the provisions of and amendments made by this Act to jurisdictions of the State.

The House bill contained no similar provision.

The House recedes with a clarifying amendment.

Establishment of procedures for absent uniformed services voters and overseas voters to request and for States to send voter registration applications and absentee ballot applications by mail and electronically (sec. 577)

The Senate amendment contained a provision (sec. 584) that would amend section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) to require States to establish procedures for absent uniformed services voters and overseas voters to request, and for States to send, voter registration and absentee ballot applications by mail and electronically with respect to general, special, primary and runoff elections for federal office. The provision would also require each State to designate not less than one means of electronic communication for use by absentee uniform service voters and overseas voters.

The House bill contained no similar provision.