

Child Custody and Visitation During Military Temporary Duty, Deployment, or Mobilization

This Act establishes procedures to expedite hearings on child custody and visitation issues for service members who are absent or about to depart for duty.

Submitted as:
North Carolina
Session Law 2007-175
Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Facilitate a Fair Process to
2 Resolve Child Custody and Visitation Disputes for Parents Serving Military Duty.”
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4 Section 2. [*Purpose.*] It is the purpose of this Act to provide a means by which to facilitate
5 a fair, efficient, and swift process to resolve matters regarding custody and visitation when a
6 parent receives temporary duty, deployment, or mobilization orders from the military.
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8 Section 3. [*Definitions.*] As used in this Act:

9 (1) The term ‘deployment’ means the temporary transfer of a service member
10 serving in an active-duty status to another location in support of combat or some other military
11 operation.

12 (2) The term ‘mobilization’ means the call-up of a National Guard or Reserve
13 service member to extended active duty status. For purposes of this definition, ‘mobilization’ does
14 not include National Guard or Reserve annual training.

15 (3) The term ‘temporary duty’ means the transfer of a service member from one
16 military base to a different location, usually another base, for a limited period of time to
17 accomplish training or to assist in the performance of a noncombat mission.
18

19 Section 4. [*Custody and Visitation upon Military Temporary Duty, Deployment, or*
20 *Mobilization.*]

21 (a) When a parent who has custody, or has joint custody with primary physical custody,
22 receives temporary duty, deployment, or mobilization orders from the military that involve
23 moving a substantial distance from the parent's residence or otherwise have a material effect on
24 the parent's ability to exercise custody responsibilities:

25 (1) any temporary custody order for the child during the parent's absence shall end
26 no later than [10] days after the parent returns, but shall not impair the discretion of the court to
27 conduct a hearing for emergency custody upon return of the parent and within [10] days of the
28 filing of a verified motion for emergency custody alleging an immediate danger of irreparable
29 harm to the child; and

30 (2) the temporary duty, mobilization, or deployment and the temporary disruption
31 to the child's schedule shall not be a factor in a determination of change of circumstances if a
32 motion is filed to transfer custody from the service member.

33 (b) If the parent with visitation rights receives military temporary duty, deployment, or
34 mobilization orders that involve moving a substantial distance from the parent's residence or
35 otherwise have a material effect on the parent's ability to exercise visitation rights, the court may
36 delegate the parent's visitation rights, or a portion thereof, to a family member with a close and
37 substantial relationship to the minor child for the duration of the parent's absence, if delegating
38 visitation rights is in the child's best interest.

39 (c) Upon motion of a parent who has received military temporary duty, deployment, or
40 mobilization orders, the court shall, for good cause shown, hold an expedited hearing in custody
41 and visitation matters instituted under this section when the military duties of the parent have a
42 material effect on the parent's ability, or anticipated ability, to appear in person at a regularly
43 scheduled hearing.

44 (d) Upon motion of a parent who has received military temporary duty, deployment, or
45 mobilization orders, the court shall, upon reasonable advance notice and for good cause shown,
46 allow the parent to present testimony and evidence by electronic means in custody and visitation
47 matters instituted under this section when the military duties of the parent have a material effect on
48 the parent's ability to appear in person at a regularly scheduled hearing. The phrase 'electronic
49 means' includes communication by telephone, video teleconference, or the Internet.

50 (e) Nothing in this section shall alter the duty of the court to consider the best interest of
51 the child in deciding custody or visitation matters.

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53 Section 5. [*Severability.*] [Insert severability clause.]

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55 Section 6. [*Repealer.*] [Insert repealer clause.]

56

57 Section 7. [*Effective Date.*] [Insert effective date.]