

## ARIZONA

ARIZ. REV. STAT. § 25-411 (2008). Modification of custody decree; affidavit; contents

A. A person shall not make a motion to modify a custody decree earlier than one year after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may seriously endanger the child's physical, mental, moral or emotional health...Except as otherwise provided in subsection B of this section, if a custodial parent is a member of the United States armed forces, **the court shall consider the terms of that parent's military family care plan to determine what is in the child's best interest during the custodial parent's military deployment.**<sup>1</sup>

B. For the purposes of a motion **to modify a custody decree, the military deployment of a custodial parent who is a member of the United States armed forces is not a change in circumstances that materially affects the welfare of the child if the custodial parent has filed a military family care plan with the court at a previous custody proceeding and if the military deployment is less than six months.**

C. **A custody decree or order that a court enters in contemplation of or during the military deployment of a custodial parent outside of the continental United States shall specifically reference the deployment and include provisions governing the custody of the minor child after the deployment ends.**<sup>2</sup> Either parent may file a petition with the court after the deployment ends to modify the decree or order, in compliance with subsection F of this section. The court shall hold a hearing or conference on the petition within thirty days after the petition is filed.

## ARKANSAS

ARK. CODE ANN. § 9-13-110 (2009). Parents who are members of the armed forces.

(a) As used in this section:

(1) "Armed forces" means the National Guard and the reserve components of the armed forces, the United States Army, the United States Navy, the United States Marine Corps, the United States Coast Guard, and the United States Air Force, and any other branch of the military and naval forces or auxiliaries of the United States or Arkansas; and

(2) "Mobilized parent" means a parent who:

(A) Is a member of the armed forces; and

(B) Is called to active duty or receives orders for duty that is outside the state or country...

**(b) A court shall not permanently modify an order for child custody or visitation solely on the basis that one (1) of the parents is a mobilized parent.**

(c) (1) A court of competent jurisdiction shall determine whether a temporary modification to an order for child custody or visitation is appropriate for a child or children of a mobilized parent.

(2) The determination under this subsection (c) includes consideration of any and all circumstances that are necessary to maximize the mobilized parent's time and contact with his or her child that is consistent with the best interest of the child, including without limitation:

(A) The ordered length of the mobilized parent's call to active duty;

(B) The mobilized parent's duty station or stations;

(C) The opportunity that the mobilized parent will have for contact with the child through a leave, a pass, or other authorized absence from duty;

(D) The contact that the mobilized parent has had with the child before the call to active military duty;

(E) The nature of the military mission, if known; and

(F) Any other factor that the court deems appropriate under the circumstances.

**(d) This section shall not limit the power of a court of competent jurisdiction to permanently modify an order of child custody or visitation in the event that a parent volunteers for permanent military duty as a career choice regardless of whether the parent volunteered for permanent military duty while a member of the armed forces.<sup>3</sup>**

## CALIFORNIA

CAL. FAM. CODE § 3047 (2009). Absence, relocation or failure to comply due to military deployment outside state

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

## COLORADO

COLO. REV. STAT. § 14-10-131.3 (2008). Modification of the allocation of parental responsibilities and parenting time based upon military service - legislative declaration - definitions

(1) (a) The general assembly hereby finds that:

(I) An armed forces reserves or state National Guard member who is called to active duty faces unique challenges with respect to parenting his or her child while at the same time meeting his or her obligation to serve in the military;

(II) The allocation of parental responsibilities and the parenting plan for a child is often modified as a result of a parent being deployed or called to federal active duty. It is important that service members, children, and other parents share the same expectation as to what the parental responsibilities and parenting time orders will be when the service member parent returns and that the relationship between a service member parent and his or her child will not be unfairly impacted due to military service.

(b) The general assembly therefore finds that the interests of the parents and the child are best served when:

**(I) Modifications of parental responsibilities and parenting time that are based solely upon the deployment or federal active duty of reserve or National Guard members are limited in duration; and**

**(II) Upon the service member parent's return from deployment or active duty, the allocation of parental responsibilities and parenting time reverts to the orders in place at the time the service member was deployed or called to federal active duty.**

(2) As used in this section, unless the context otherwise requires:

**(a) "Active duty" means full-time service in:**

**(I) A reserve component of the armed forces; or**

**(II) The National Guard for a period that exceeds thirty consecutive days in a calendar year.<sup>5</sup>**

(b) "Armed forces" includes the reserve components of the United States Army, Navy, Marine Corps, Air Force, and Coast Guard.

(c) "Parent" means parent, legal guardian, or person awarded parental decision-making responsibilities or parenting time.

(d) "Service member" means a member of a reserve component of the United States armed forces or a member of a state National Guard.

(3) (a) If a motion to modify an order concerning the allocation of parental responsibilities or parenting time is filed either prior to or during a service member parent's active duty deployment, and the court finds that the service member parent's active duty deployment is the sole basis for the modification, any resulting order shall be an interim order.

**(b) Upon a service member parent's filing of written notice with the court of his or her return to Colorado from active duty deployment, and service of the notice on the other parent, the interim orders are vacated, and the orders concerning the allocation of parental responsibilities and parenting time that were in effect at the time the interim orders were entered shall be immediately reinstated without the need for court action.<sup>9</sup>**

(4) Nothing in this section restricts the right of a parent to:

(a) Consent to a modification of the allocation of parental responsibilities or parenting time that continues beyond the end of the service member parent's active duty deployment; or

(b) File a motion, pursuant to applicable law, seeking a modification of the allocation of parental responsibilities or parenting time after the interim orders are vacated.

(5) A service member parent's agreement to a modification of parental responsibilities or parenting time on an interim basis, due to his or her active duty deployment, shall not be considered agreement to a modification or consent to the integration of the child into the other parent's household for the purpose of a motion filed pursuant to [section 14-10-129 \(2\)](#) or [14-10-131 \(2\)](#).

**(6) Modification of child support may be appropriate when an interim order is entered based upon a service member parent's active duty deployment.<sup>15</sup>** In any motion filed pursuant to this section, it is the parties' responsibility to address child support at that time pursuant to [sections 14-10-115](#) and [14-10-122](#).

## **DELAWARE**

13 DEL. CODE ANN. § 727 (2009). Custody

**(d) Any custody order entered when 1 or both parents is a member of the armed forces, including the National Guard, and is being deployed, shall be an interim order, modifiable upon the return of the Armed Forces member to the United States or termination of service.**

## **FLORIDA**

FLA. STAT. ANN. § 61.13002 (2009). Temporary time-sharing modification and child support modification due to military service

- (1) If a supplemental petition or a motion for modification of time-sharing and parental responsibility is filed because a parent is activated, deployed, or temporarily assigned to military service and the parent's ability to comply with time-sharing is materially affected as a result, **the court may not issue an order or modify or amend a previous judgment or order that changes time-sharing as it existed on the date the parent was activated, deployed, or temporarily assigned to military service, except that a court may enter a temporary order to modify or amend time-sharing if there is clear and convincing evidence that the temporary modification or amendment is in the best interests of the child.** When entering a temporary order under this section, the court shall consider and **provide for, if feasible, contact between the military servicemember and his or her child, including, but not limited to, electronic communication by webcam, telephone, or other available means.** The court shall also permit liberal time-sharing during periods of leave from military service, as it is in the child's best interests to maintain the parent-child bond during the parent's military service.
- (2) **If a temporary order is issued under this section, the court shall reinstate the time-sharing order previously in effect upon the servicemember parent's return from active military service, deployment, or temporary assignment.**
- (3) If a temporary order is entered under this section, the court may address the issue of **support** for the child by:
- (a) Entering an order of temporary support from the servicemember to the other parent under [s. 61.30](#);
  - (b) Requiring the servicemember to enroll the child as a military dependent with DEERs, TriCare, or other similar benefits available to military dependents as provided by the service member's branch of service and federal regulations; or
  - (c) Suspending, abating, or reducing the child support obligation of the nonservice member **until the custody judgment or time-share order previously in effect is reinstated.**
- (4) This section does not apply to permanent change of station moves by military personnel, which shall be governed by [s. 61.13001](#).

## GEORGIA

GA. CODE ANN. § 19-9-122 (2009). Delegation of authority; hardships; exception

- (a) **A parent of a minor child may delegate to any grandparent<sup>16</sup> residing in this state caregiving authority regarding the minor child when hardship prevents the parent from caring for the child. This authority may be delegated without the approval of a court by executing in writing a power of attorney for the care of a minor child in a form substantially complying with the provisions of this article.**
- (b) Hardships may include, but are not limited to:
- (1) A parent being unable to provide care due to the death of the other parent;
  - (2) A serious illness or terminal illness of a parent;
  - (3) The physical or mental condition of the parent or the child such that proper care and supervision of the child cannot be provided by the parent;
  - (4) The incarceration of a parent;
  - (5) The loss or uninhabitability of the **child's** home as the result of a natural disaster; or
  - (6) **A period of active military duty of a parent exceeding 24 months.**

## IDAHO

IDAHO CODE ANN. § 32-717 (2009). Custody of children -- Best interest

(6) **With reference to this section, when an active member of the Idaho national guard<sup>6</sup> has been ordered or called to duty as defined in section 46-409, Idaho Code, or when a member of the military reserve is ordered to active federal service under title 10, United States Code, such military service thereunder shall not be a substantial or material and permanent change in circumstance to modify by reducing the member's previously decreed child custody and visitation privileges.**

IDAHO CODE ANN. § 15-5-104 (2009). Delegation of powers by parent or guardian

**A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six (6) months, or in the case of military personnel serving beyond the territorial limits of the United States for a period not exceeding twelve (12) months, any of the parent's or guardian's powers regarding care, custody, or property of the minor or ward including, but not limited to, powers for medical care and educational care of the minor or ward, except the parent's or guardian's power to consent to marriage or adoption of a minor or ward. The delegation for a minor to a grandparent of the minor, or to a sibling of the minor, or to a sibling of either parent of the minor, shall continue in effect until the time period, or date, or condition set forth in the power of attorney for automatic expiration of the power of attorney occurs. If the power of attorney does not provide a time period, or date, or condition for automatic expiration of the power, the power of attorney shall continue in effect for a period of three (3) years. The power may be revoked prior to the expiration of the three (3) year period, or prior to the time period, or date, or condition for automatic expiration, in a writing delivered to the grandparent or sibling by the delegating parent or guardian. The power of attorney does not need to be notarized or recorded to be valid. However, if the power is recorded, any revocation of the power by a writing must also be recorded before the revocation is effective.**

## ILLINOIS

2009 ILL. A.L.S. 676 (effective 2010)

§ 602. Best Interest of Child.

(a) The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

**(10) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the united states armed forces who is being deployed<sup>1</sup>.**

§ 610. Modification.

**(E) a party's absence, relocation, or failure to comply with the court's orders on custody, visitation, or parenting time may not, by itself, be sufficient to justify a modification of a prior order if the reason for the absence, relocation, or failure to comply is the party's**

**deployment as a member of the United States armed forces.**

## **IOWA**

IOWA CODE § 598.41C (2008). Modification of child custody or physical care -- active duty.

1. If an application for modification of a decree or a petition for modification of an order regarding child custody or physical care is filed prior to or during the time a parent is serving active duty in the military service of the United States, **the court may only enter an order or decree temporarily modifying the existing child custody or physical care order or decree** if there is clear and convincing evidence that the modification is in the best interest of the child. **Upon the parent's completion of active duty, the court shall reinstate<sup>10</sup> the custody or physical care order or decree that was in effect immediately preceding the period of active duty. If an application for modification of a decree or a petition for modification of an order is filed after a parent completes active duty, the parent's absence due to active duty does not constitute a substantial change in circumstances, and the court shall not consider a parent's absence due to that active duty in making a determination regarding the best interest of the child.**

2. As used in this section, "*active duty*" means active military duty pursuant to orders issued under Title X of the United States Code. However, this section shall not apply to active guard and reserve duty or similar full-time military duty performed by a parent when the child remains in actual custody of the parent.

## **KANSAS**

KAN. STAT. ANN. § 60-1630 (2008). Child custody and parenting time for parents deployed by the military; modification of orders; hearing.

(b) The absence, relocation or failure to comply with a custody or parenting time order by a parent who has received deployment, mobilization, temporary duty or unaccompanied tour orders from the military, **shall not, by itself, constitute a material change in circumstances warranting a permanent modification of a custody or parenting time order.**

(c) Any court order limiting previously ordered custodial or parenting time rights of a parent due to the parent's deployment, mobilization, temporary duty or unaccompanied tour **shall specify the deployment, mobilization, temporary duty or unaccompanied tour as the basis for the order and shall be entered by the court as a temporary order.** Any such order shall further require the nondeploying parent to provide the court with 30 days advance written notice of any change of address and any change of telephone number.

(d) **The court, on motion of the parent returning from deployment, mobilization, temporary duty or unaccompanied tour, seeking to amend or review the custody or parenting time order based upon such deployment, mobilization, temporary duty or unaccompanied tour, shall set a hearing on the matter that shall take precedence on the court's docket and shall be set within 30 days of the filing of the motion.** Service on the nondeploying parent shall be at such nondeploying parent's last address provided to the court in writing. Such service, if otherwise sufficient, shall be deemed sufficient for the purposes of notice for this subsection. **For purposes of this hearing, such nondeploying parent shall bear**



**the burden of showing that reentry of the custody or parenting time order in effect prior to deployment, mobilization, temporary duty or unaccompanied tour is no longer in the best interests of the child.**

(e) If the parties in a custody or parenting time matter concerning a parent who receives deployment, mobilization, temporary duty or unaccompanied tour orders from the military have entered into a parenting plan pursuant to [K.S.A. 60-1625](#), and amendments thereto, that includes provisions for custody and parenting time upon military deployment, mobilization, temporary duty or unaccompanied tour, it shall be presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interests of the child.

(f) If a parent with parenting time rights receives deployment, mobilization, temporary duty or unaccompanied tour orders from the military that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to exercise parenting time rights, **the court may delegate the parent's parenting time rights, or a portion thereof, to a member or members of the service member's family with a close and substantial relationship to the minor child for the duration of the parent's absence, if delegating parenting time rights is in the best interests of the child.**

(g) Upon motion of a parent who has received deployment, mobilization, temporary duty or unaccompanied tour orders from the military, the court shall, for good cause shown, hold an **expedited hearing** in custody and parenting time matters instituted under this section when the military duties of the parent have a material effect on the parent's ability, or anticipated ability, to appear in person at a regularly scheduled hearing.

(h) Nothing in this section shall preclude a parent from petitioning for a modification of a custody or parenting time order based upon a material change in circumstances.

(i) Any order entered pursuant to this section shall provide that:

(1) The nondeploying parent shall **reasonably accommodate the leave schedule<sup>19</sup>** of the parent subject to deployment, mobilization, temporary duty or unaccompanied tour orders;

(2) **the nondeploying parent shall facilitate opportunities for telephonic and electronic mail contact between the parent subject to deployment<sup>4</sup>**, mobilization, temporary duty or unaccompanied tour orders and the child during the period of such deployment, mobilization, temporary duty or unaccompanied tour; and

(3) the parent subject to deployment, mobilization, temporary duty or unaccompanied tour shall provide timely information regarding such parent's leave schedule to the nondeploying parent.

Willful violation of such order shall constitute contempt of court.

(j) Nothing in this section shall alter the duty of the court to determine custody or parenting time matters in accordance with the best interests of the child.

K.S.A. § 60-1625 (2008): Same; permanent; objectives; general outline, provisions.

(b) A permanent parenting plan may consist of a general outline of how parental responsibilities and parenting time will be shared and may allow the parents to develop a more detailed agreement on an informal basis; however, a permanent parenting plan must set forth the following minimum provisions:

(4) if either parent is a service member, as defined in K.S.A. 2008 Supp. 60-1630, and amendments thereto, provisions for **custody** and parenting time upon military **deployment**, mobilization, temporary duty or unaccompanied tour of such service member.

(c) **A detailed permanent parenting plan shall include those provisions required by subsection (b), and may include, but need not be limited to, provisions relating to<sup>2</sup>:**

- (1) Residential schedule;
- (2) holiday, birthday and vacation planning;
- (3) weekends, including holidays and school inservice days preceding or following weekends;
- (4) allocation of parental rights and responsibilities regarding matters pertaining to the child's health, education and welfare;
- (5) sharing of and access to information regarding the child;
- (6) relocation of parents;
- (7) telephone access;
- (8) transportation; and
- (9) methods for resolving disputes.

## KENTUCKY

KY. REV. STAT. ANN. § 403.340 (2009). Modification of custody decree -- Modification based on active duty deployment to revert back on parent or custodian's return.

**(5) (a)** Except as provided in paragraph (b) of this subsection, any court-ordered modification of a child custody decree, based in whole or in part on:

**1.** The active duty of a parent or a de facto custodian as a regular member of the United States Armed Forces deployed outside the United States; or

**2.** Any federal active duty of a parent or a de facto custodian as a member of a state National Guard or a Reserve component;

(a) **shall be temporary** and shall **revert back to the previous child custody decree at the end of the deployment<sup>12</sup> outside the United States or the federal active duty, as appropriate.**

**(b)** A parent or de facto custodian identified in paragraph (a) of this subsection may consent to a modification of a child custody decree that continues past the end of the deployment outside the United States or the federal active duty, as appropriate.

**(6)** Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

## LOUISIANA

LA. REV. STAT. ANN. 9:348 (2009). Loss of visitation due to military service; compensatory visitation

**B. (1) When a service member on active duty is unable due to his military obligations to have visitation with a minor child as authorized by a court order, the service member may request a period of compensatory visitation with the child which shall be granted only if the court determines it is in the best interest of the child. Such compensatory visitation shall be negotiated, on a day-for-day basis for each day missed, for the number of compensatory days requested by the service member, not to exceed the total number of days missed. The custodial or domiciliary parent shall negotiate with the service member to develop an equitable schedule for the requested compensatory visitation.<sup>17</sup>**



(2) (a) If the parents cannot establish an equitable arrangement for compensatory visitation as required by this Section, the requesting parent may petition the court having jurisdiction to enforce the judicial order for visitation for a temporary alteration to the current visitation order by making an adjustment to require compensatory visitation for visitation days lost as a result of an obligation of active duty. The court may refer the parent to mediation under the provisions of [R.S. 9:332](#).

(b) The court may render judgment for court costs against either party or may apportion such costs between the parties as it may consider equitable.

LA. REV. STAT. ANN. 9:3879.1 (2009). **Care, custody, and control of minor child**  
**In a military power of attorney, the language granting power with respect to the care, custody, and control of a minor child empowers the agent to do all of the following:**

(1) The general functions, powers, and duties accorded to tutors pursuant to Chapter 8 of Title VI of Book VII of the Code of Civil Procedure, except those that require court approval.

(2) Consenting to and authorizing such medical care, treatment, or surgery as may be deemed necessary for the health, safety, and welfare of the child or children.

(3) Enrolling the child or children in such schools or educational institutions as may be deemed necessary for his due and proper education.

(4) Disciplining the child in such reasonable manner as may be necessary for his proper rearing, supervision, and training.

## MAINE

ME. REV. STAT. ANN. 18-A, § 5-104 (2009). Delegation of powers by parent or guardian

A) A parent or guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 6 months, any of that parent's or guardian's powers regarding care, custody or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward. A delegation by a court appointed guardian becomes effective only when the power of attorney is filed with the court.

B) **Notwithstanding subsection (a), unless otherwise stated in the power of attorney, if the parent or guardian is a member of the National Guard or Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a power of attorney that would otherwise expire is automatically extended until 30 days after the parent or guardian is no longer under those active duty orders or until an order of the court so provides.**

This subsection applies only if the parent or guardian's service is in support of:

1) An operational mission for which **members of the reserve component have been ordered to active duty without their consent**; or

2) Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress.

## MARYLAND

MD. FAM. LAW CODE ANN. § 9-108 (2009). Custody or visitation order based on deployment of

a parent

(b) Specific reference of deployment in order. -- Any order or modification of an existing child custody or visitation order issued by a court during a term of a deployment of a parent shall specifically reference the deployment of the parent.

(c) Specific reference to end of deployment in petition; hearing. --

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

(2) (i) **If the petition under paragraph (1) of this subsection is filed within 30 days after the end of the deployment of the parent,<sup>16</sup> the court shall set a hearing on the petition on an expedited basis.**

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

(d) Other requirements of order. -- Any custody or visitation order issued based on the deployment of a parent shall require that:

(1) the other parent **reasonably accommodate the leave schedule<sup>19</sup>** of the parent who is subject to the deployment;

(2) **the other parent facilitate opportunities for telephone and electronic mail contact between the parent who is subject to the deployment and the child during the period of deployment;<sup>4</sup>** and

(3) the parent who is subject to the deployment provide timely information regarding the parent's leave schedule to the other parent.

## MICHIGAN

MICH. COMP. LAWS SERV. § 722.27 (2009). Child custody disputes; powers of court; support order; enforcement of judgment or order.

Sec. 7. (1) If a child custody dispute has been submitted to the circuit court as an original action under this act or has arisen incidentally from another action in the circuit court or an order or judgment of the circuit court, for the best interests of the child the court may do 1 or more of the following:

(c) Modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances until the child reaches 18 years of age...**If a motion for change of custody is filed during the time a parent is in active military duty, the court shall not enter an order modifying or amending a previous judgment or order, or issue a new order,** that changes the child's placement that existed on the date the parent was called to active military duty, **except the court may enter a temporary custody order if there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's return from active military duty, the court shall reinstate<sup>10</sup> the custody order in effect immediately preceding that period of active military duty.** If a motion for change of custody is filed after a parent returns from active military duty, the court shall not consider a parent's absence due to that military duty in a best interest of the child determination.

## MISSISSIPPI

MISS. CODE ANN. § 93-5-34 (2009). Child custody and visitation when a parent receives temporary duty, deployment or mobilization orders from the military

(1) It is the purpose of this section to provide a means by which to facilitate a fair, efficient and swift process to resolve matters regarding custody and visitation when a parent receives temporary duty, deployment or mobilization orders from the military.

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

**(a) Any temporary custody order for the child during the parent's absence shall end no later than ten (10) days after the parent returns, but shall not impair the discretion of the court to conduct a hearing for emergency custody upon return of the parent and within ten (10) days of the filing of a verified motion for emergency custody alleging an immediate danger of irreparable harm to the child<sup>11</sup>; and**

**(b) The temporary duty, mobilization or deployment of the service member and the temporary disruption to the child's schedule shall not be factors in a determination of change of circumstances if a motion is filed to transfer custody from the service member.**

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

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

(6) Upon motion of a parent who has received military temporary duty, deployment or mobilization orders, the court shall, upon reasonable advance notice and for good cause shown, **allow the parent to present testimony and evidence by affidavit or electronic means in custody and visitation matters** instituted under this section when the military duties of the parent have a material effect on the parent's ability to appear in person at a regularly scheduled teleconference, or the Internet.

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

## MISSOURI

MO. REV. STAT. § 452.412 (2009). Military service of parent not to be a basis for modification of a visitation or custody order

1. **A party's absence, relocation, or failure to comply with custody and visitation orders shall not, by itself, be sufficient to justify a modification of a custody or visitation order if the reason for the absence, relocation, or failure to comply is the party's activation to military service and deployment out-of-state.**
2. For a party in active military service and deployed out-of-state, any court order:
  - (1) Issued or modified regarding child custody or visitation during the time of such out-of-state military deployment of the party, including as part of an entry of decree of dissolution of marriage or legal separation, **shall be temporary in nature and shall not exceed the length of time of such deployment;**
  - (2) Issued regarding ex parte adult or child orders of protection under sections 455.010 to 455.085, RSMO, or Sections 455.500 to 455.538, RSMO, during the time of such out-of-state military deployment of the party, may be extended beyond the initial fifteen days required under Sections 455.040 and 455.516, RSMO. Such orders issued under this subdivision shall be temporary in nature and shall not exceed the length of time of such deployment. **Upon such party's return from out-of-state military deployment, the party shall be given an opportunity to be heard on the child custody and visitation order or ex parte order of protection prior to a permanent order being entered by the court as to such issues.** If the party in active military service knowingly and voluntarily signs a written waiver to the right to have such a hearing upon the party's return from out-of-state military deployment, the court may issue a permanent order on the issues under this section.

## NEW JERSEY

pending- S. 2910, 212th Legis., 2006-2007 Sess. (N.J. 2007)

An Act concerning changes in child custody during active military duty and amending R.S. 9:2-4.

**g. If a motion for a change of custody is filed during a time a parent is in active military duty, the court shall not enter an order modifying or amending a judgment or order previously entered, or enter a new order that alters the custody arrangement in existence on the date the parent was called to active military duty, except that the court may enter a temporary custody order if there is clear and convincing evidence that it is in the best interest of the child.**

**If a motion for a change of custody is filed after a parent returns from active military duty, the court shall not consider a parent's absence due to military duty, by itself, to be sufficient to justify a modification of a child custody or visitation order.**

(cf: P.L.1997, c.299, s.9)

## NEW YORK

New York MCKINNEY's DRL 75-1 (2009):

1. During the period of time that a parent is activated, deployed or temporarily assigned to military service, such that the parent's ability to continue as a joint caretaker or the primary caretaker of a minor child is materially affected by such military service, a **court shall be prohibited from issuing any permanent orders, modifications or amendments, based on the fact that the parent is activated, deployed or temporarily assigned to military service, which would in any way effect or change a previous judgment or order regarding custody of that parent's child or children as such judgment or order existed on the date the parent was activated, deployed, or temporarily assigned to military service.** Any relevant provisions of the Service Member's Civil Relief Act shall apply to all proceedings governed by this section.
2. During such period the court may enter a temporary order to modify or amend custody if there is clear and convincing evidence that the temporary modification or amendment is in the best interests of the child. An attorney for the child shall be appointed in all cases where a temporary modification is sought during such military service. When entering a temporary order under this section, the **court shall consider and provide for, if feasible and if in the best interest of the child, contact between the military service member and his or her child including, but not limited to, electronic communication by webcam, telephone, or other available means.** During the period of the parent's leave from military service, the court shall consider the best interest of the child when establishing a parenting schedule. For such purpose, a "leave from service" shall be a period of not more than three months.
3. **If a temporary order is issued under this section, upon the return of the parent from active military service, deployment or temporary assignment and upon the request of either parent, there shall be held a hearing at which the court shall determine whether there has been a change of circumstances such that the custody judgment or order previously in effect should be changed, amended or modified.**
4. This section shall not apply to assignments to permanent duty stations or permanent changes of station.

## NORTH CAROLINA

N.C. GEN. STAT. § 50-13.7A (2008)

(a) Purpose. -- It is the purpose of this section to provide a means by which to facilitate a fair, efficient, and swift process to resolve matters regarding custody and visitation when a parent receives temporary duty, deployment, or mobilization orders from the military.

(b) Definitions. -- As used in this section:

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

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

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

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

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

(1) **Any temporary custody order for the child during the parent's absence shall end no later than 10 days after the parent returns<sup>11</sup>**, but shall not impair the discretion of the court to conduct a hearing for emergency custody upon return of the parent and within 10 days of the filing of a verified motion for emergency custody alleging an immediate danger of irreparable harm to the child; and

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

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

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

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

(g) [Best interest of the child. --] Nothing in this section shall alter the duty of the court to consider the best interest of the child in deciding custody or visitation matters.

## NORTH DAKOTA

N.D. CENT. CODE § 14-09-06.6 (2008)

If a motion for change of custody is filed during the time a parent is in active duty service, **the court may not enter an order modifying or amending a previous judgment or order, or issue a new order, which changes the child's placement that existed on the date the parent was called to active duty service,<sup>14</sup> except the court may enter a temporary custody order that is in the best interest of the child. The temporary custody order must explicitly provide that custody must be restored to the service member upon the service member's release from active duty service,** unless the court finds by clear and convincing evidence that restoration of custody would not be in the best interest of the child. If an original custody decision is pending and the service member is alerted for active duty service, or is absent for active duty service, **the court may not issue a permanent custody order until the return of the service member from active duty.** The court may issue a temporary custody order in the



best interest of the child for the time period of the active duty service. This section does not prevent a service member from consenting to a modification of custody that continues past discharge or release from active duty service or to agreeing to a permanent custody order before release from active duty service. For purposes of this section, **"service member" means a member of the national guard or a reserve unit of the United States armed forces and "active duty service" means an order to active duty under United States Code title 10.** <sup>5</sup> <http://www.legis.nd.gov/assembly/60-2007/session-laws/bill-table.html>

## OHIO

Ohio- OHIO REV. CODE § 3109.04

(I) Upon receipt of an order to active military service in the uniformed services, a parent who is subject to an order allocating parental rights and responsibilities or in relation to whom an action to allocate parental rights and responsibilities is pending and who is ordered to active military service shall notify the other parent who is subject to the order or in relation to whom the case is pending of the order to active military service within three days of receiving the military service order. **Either parent may apply to the court for a hearing to expedite an allocation or modification proceeding.** The application shall include the date on which the active military service begins.

The court shall schedule a hearing upon receipt of the application and hold the hearing not later than thirty days after receipt of the application, except that the court shall give the case calendar priority and handle the case expeditiously if exigent circumstances exist in the case.

**The court shall not modify a prior decree allocating parental rights and responsibilities unless the court determines that there has been a change in circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree, and that modification is necessary to serve the best interest of the child.** The court may consider active military service in the uniformed services in determining whether a change in circumstances exists under this section and shall make specific written findings of fact to support any modification under this division.

Upon application by either parent, the court may modify a prior decree allocating parental rights and responsibilities after the parent's active military service has been terminated, hearing testimony and making specific written findings of fact to support the modification.

Nothing in this division shall prevent a court from issuing a temporary order allocating or modifying parental rights and responsibilities for the duration of the parent's active military service.

(J) As used in this section:

...

(2) "Active military service" means the performance of active military duty by a member of the uniformed services for a period of more than thirty days.

...

(5) “Uniformed services” means the United States armed forces, army national guard and air national guard when engaged in active duty for training, or the commissioned corps of the United States public health service.<sup>6</sup>

<http://codes.ohio.gov/orc/3109.04>

## OKLAHOMA

OKLA. STAT. tit. 43, § 112 (2008)

5. Notwithstanding any custody determination made pursuant to the Oklahoma Children’s Code, Section 7001-1.1 et seq. of Title 10 of the Oklahoma Statutes, **when a custodial parent of a child is required to be separated from a child due to military service, a court shall not enter a final order modifying an existing custody order until such time as the custodial parent has completed the term of duty requiring separation.** For purposes of this paragraph:

a. In the case of a parent who is a member of the Army, Navy, Air Force, Marine Corps or Coast Guard, the term “military service” means a combat deployment, contingency operation, or natural disaster requiring the use of orders that do not permit any family member to accompany the member; and

b. In the case of a parent who is a member of the National Guard, the term “military service” means service under a call to active service authorized by the President of the United States or the Secretary of Defense for a period of more than thirty (30) consecutive days under 32 U.S.C. 502(f) for purposes of responding to a national emergency declared by the President and supported by federal funds. “Military service” shall include any period during which a member is absent from duty on account of sickness, wounds, leave or other lawful cause.

<http://www.lsb.state.ok.us/osstatuestitle.html>

## OREGON

ORE. REV. STAT. § 107.169 (2007)

**(6)(a) The inability of a parent to comply with the terms and conditions of a joint custody order due to the parent's temporary absence does not constitute a change of circumstances if the parent's temporary absence is caused by the parent being:**

**(A) Called into active state duty as defined in ORS 398.002; or**

[inserted: 398.002: (2) “Active state duty” means full-time duty in the active military service of the state under an order of the Governor issued under authority vested in the Governor by law, and includes travel to and from such duty. The term “active state duty” also includes all Oregon National Guard personnel serving on active duty under Title 32 U.S.C. 502 (f).]

**(B) Called into active federal service under Title 10 of the United States Code as a member of the Oregon National Guard.<sup>7</sup>**

(b) As used in this subsection, “temporary absence” means a period not exceeding 30 consecutive months.

## PENNSYLVANIA

51 PA.C.S.A. § 4109 (2007)

### § 4109. Child custody proceedings during military deployment

(a) Restriction on change of custody.--If a petition for change of custody of a child of an eligible servicemember is filed with any court in this Commonwealth while the eligible 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 eligible servicemember, **except that a court may enter a temporary custody order if it is in the best interest of the child.**

**(b) Completion of deployment.--In any temporary custody order entered under subsection (a), a court shall require that, upon the return of the eligible 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 eligible servicemember is reinstated.**

(c) Exclusion of military service from determination of child's best interest.--If a petition for the change of custody of the child of an eligible servicemember who was deployed in support of a contingency operation is filed after the end of the deployment, **no court may consider the absence of the eligible servicemember by reason of that deployment in determining the best interest of the child.**

(d) Failure to appear due to military deployment.--The failure of an eligible servicemember to appear in court due to deployment in support of a contingency operation shall not, in and of itself, be sufficient to justify a modification of a custody or visitation order if the reason for the failure to appear is the eligible servicemember's active duty in support of a contingency operation.

(e) Relationship to other laws.--Notwithstanding any other provision of law, the provisions of this section shall be applied with regard to child custody issues related to eligible servicemembers deployed in support of contingency operations.

(f) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Contingency operation.” A military operation that:

(1) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations or hostilities against an enemy of the United States or against an opposing military force; or

(2) results in the call or order to, or retention on, active duty of members of the uniformed services under 10 U.S.C. § 688 (relating to retired members: authority to order to active duty; duties), 12301(a) (relating to reserve components generally), 12302 (relating to Ready Reserve), 12304 (relating to Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency), 12305 (relating to authority of President to suspend certain laws relating to promotion, retirement, and separation) or 12406 (relating to National Guard in Federal service: call) or any other provision of 10 U.S.C. during a war or during a national emergency declared by the President or Congress.

“Eligible servicemember.” A member of the Pennsylvania National Guard or a member of an active or reserve component of the Armed Forces of the United States who is serving on active duty, other than active duty for training, for a period of 30 or more consecutive days, in support of a contingency operation.

## **SOUTH CAROLINA**

2009 S.C. Acts 25 [\*1] SECTION 1. Chapter 5, Title 63 of the 1976 Code is amended by adding:

"Article 7

Military Parent Equal Protection Act

Section 63-5-900. This article may be cited as the 'Military Parent Equal Protection Act'.

Section 63-5-910. For purposes of this article:

(A)(1) In the case of a parent who is a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or a Reserve component of these services, 'military service or service' means a deployment for combat operations, a contingency operation, or a natural disaster based on orders that do not permit a family member to accompany the member on the deployment.

(2) In the case of a parent who is a member of the National Guard, 'military service or service' means service under a call to active service authorized by the President of the United States or the Secretary of Defense for a period of more than thirty consecutive days pursuant to [32 U.S.C. 502\(f\)](#) for purposes of responding to a national emergency declared by the President and supported by federal funds.

'Military service or service' includes a period during which a military parent remains subject to deployment orders and remains deployed on account of sickness, wounds, leave, or other lawful cause.

(B) 'Military parent' means a natural parent or adoptive parent of a child under the age of eighteen whose parental rights have not been terminated by a court of competent jurisdiction.

Section 63-5-920. **(A) If a military parent is required to be separated from a child due to military service, a court shall not enter a final order modifying the terms establishing custody or visitation contained in an existing order until ninety days after the military parent is released from military service. A military parent's absence or relocation because of military service must not be the sole factor supporting a change in circumstance or grounds sufficient to support a permanent modification of the custody or visitation terms established in an existing order.**

(B) An existing order establishing the terms of custody or visitation in place at the time a military parent is called to military service may be temporarily modified to make reasonable accommodation for the parties because of the military parent's service. **A temporary modification automatically terminates when the military parent is released from service and, upon release, the original terms of the custody or visitation order in place at the time the military parent was called to military service are automatically reinstated.**<sup>12</sup>

(C) A temporary modification order issued pursuant to this section **must provide that the military parent has custody of the child or reasonable visitation, whichever is applicable pursuant to the original order, with the child during a period of leave granted to the military parent during their military service. If a temporary modification order is not issued pursuant to this section, the nonmilitary custodial parent shall make the child or children reasonably available to the military parent when the military parent has leave to ensure that the military parent has reasonable visitation and is able to visit the child or children.**<sup>19</sup>

**(D) If there is no existing order establishing the terms of custody or visitation and it appears that military service is imminent, upon motion by either parent, the court shall expedite a temporary hearing to establish temporary custody or visitation to ensure the military parent has access to the child, to establish support, and provide other appropriate relief.**

Section 63-5-930. (A) If a military parent is called to military service, either parent may file a notice of activation of military service and petition to modify a support order. In the petition, the parent must cite the basis for modifying the support order and the military parent's change in financial circumstances supporting the petition.

(B) The court shall temporarily modify the amount of child support for the duration of the military parent's military service based on changes in income and earning capacity of the military

parent during military service. An increase or decrease in income or earning capacity of a military parent due to military service only may be used to calculate support during the period of military service and must not be considered a permanent increase in wages or earning capacity. The effective date for a temporary modification must be the date the military parent begins military service.

(C) Upon return from military service, the military parent's child support obligation prior to a temporary modification is automatically reinstated, effective on the date the military parent is released from service. Within ninety days of the military parent's release from service, either parent may make a subsequent request for modification to correspond to a change in the military parent's nonservice related income or earning capacity. A modification must be based upon the income or earning capacity of the military parent following the period of military service.

(D) Except for modifying a child support obligation during military service pursuant to this section, a military parent's income during military service must not be used to determine the military parent's income or earning capacity.

Section 63-5-940. (A) Military necessity may preclude court adjudication before mobilization, and the parties are encouraged to negotiate mutually agreeable arrangements prior to mobilization.

(B) The nonmilitary parent and the military parent shall cooperate with each other in an effort to reach a mutually agreeable resolution of custody, visitation, and child support. Each party shall provide information to each other in an effort to facilitate agreement on custody, visitation, and child support.

(C) A provision of custody, visitation, or child support agreed to by the parties pursuant to this section must not be deemed a substantial change of circumstances in an action for custody, visitation, or child support, which occurs subsequent to termination of the military parent's military service. A negotiation of the parties concerning custody, visitation, and child support related to the military service conducted pursuant to this section are deemed settlement negotiations and are not admissible in custody, visitation, and child support actions between the parties after termination of the military parent's military service.

Section 63-5-950. In making determinations pursuant to this article, the court may award attorney's fees and costs based on the court's consideration of:

(1) the failure of either party to reasonably accommodate the other party in custody, visitation, and support matters related to a military parent's service;



- (2) unreasonable delay caused by either party in resolving custody, visitation, and support matters related to a military parent's service;
- (3) failure of either party to timely provide income and earnings information to the other party; and
- (4) other factors as the court may consider appropriate and as may be required by law."

Service member's right to proceed

[\*2] SECTION 2. Chapter 1, Title 15 of the 1976 Code is amended by adding:  
"Section 15-1-340. (A) **A service member who is entitled to a stay in civil proceedings pursuant to the Service Members Civil Relief Act, 50 U.S.C. App. Section 501, et seq. may elect to proceed while the service member is reasonably unavailable to appear in the geographical location in which the litigation is pursued and may seek relief and provide evidence through video-conferencing, internet camera, email, or another reasonable electronic means. Testimony presented must be made under oath, in a manner viewable by all parties, and in the presence of a court reporter. In matters when a party who is physically present in the State is permitted to use affidavits or seek temporary relief, the service member may submit testimony by affidavit.**

(B) The court must allow a party to proceed pursuant to this section unless an opposing party establishes a compelling reason not to proceed by clear and convincing evidence. The court must allow a party to present evidence pursuant to a method provided by this section unless an opposing party established that the method will cause a substantial injustice, deny effective cross examination, deny the right to confront the witness, or abridge another constitutional right."

## **SOUTH DAKOTA**

S.D. CODIFIED LAWS § 33-6-10 (2008)

33-6-10. Temporary delegation of guardianship during active service in armed forces. A member of the armed forces of the United States, including a member of the reserve component of the armed forces of the United States called into active service of the armed forces, and **who is the physical custodian or guardian of a minor or incapacitated person may delegate by a properly executed power of attorney to another person for a period of one year or less any of the powers regarding care and custody of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.** If the custodian or guardian is serving on active duty with the armed forces of the United States, and a power of attorney properly executed by such person lapses prior to the release of such custodian or guardian from active duty, the power of attorney shall be automatically extended for an additional year unless the custodian or guardian is sooner released from active duty. The execution of such a power of attorney pursuant to this section or upon activation of the service member into the armed forces of the United

States does not constitute a material change in circumstances for an action seeking to change the custody of the affected child or children by the parent without physical custody. **There is hereby imposed an automatic stay of all proceedings seeking a permanent change in custody of a minor child where the parent with physical custody is a member of the active component or reserve component of the armed forces of the United States called into active service during a period of national emergency. Such stay shall continue for the period of service of the national emergency, unless waived in writing by the service member.** Nothing in this section precludes a petition by the noncustodial parent to temporarily change physical custody. However, the best interests of the child shall be determinative.

<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Statute=33-6-10&Type=Statute>

## TENNESSEE

S. B. 2547 / TENN. CODE ANN. Ss36-6-113 (wrong on sheet) (2008)

36-6-113. Temporary modification of decree for child custody or visitation for children of mobilized parent. —

(a) As used in this section:

(1) “Armed forces” means the national guard and the reserve components of the armed forces, the United States army, the United States navy, the United States marine corps, the United States coast guard, and the United States air force, and any other branch of the military and naval forces or auxiliaries of the United States or this state; and

(2) “Mobilized parent” means a parent who:

(A) Is a member of the armed forces; and

(B) Is called to active duty or receives orders for duty that is outside the state or country.

**(b) A court shall not permanently modify a decree for child custody or visitation solely on the basis that one (1) of the parents is a mobilized parent.**

(c) (1) A court of competent jurisdiction shall determine whether a temporary modification to a decree for child custody or visitation is appropriate for a child or children of a mobilized parent.

(2) The determination under subdivision (c)(1) includes consideration of any and all circumstances that are necessary to maximize the mobilized parent's time and contact with the parent's child that are consistent with the best interest of the child, including, but not limited to:

(A) The ordered length of the mobilized parent's call to active duty;

(B) The mobilized parent's duty station or stations;

(C) The opportunity that the mobilized parent will have for contact with the child through a leave, a pass or other authorized absence from duty;

(D) The contact that the mobilized parent has had with the child before the call to active military duty;

(E) The nature of the military mission, if known; and

(F) Any other factor that the court deems appropriate under the circumstances.

**(d) Any court-ordered modification of a child custody decree based on the active duty of a mobilized parent shall be temporary and shall revert back to the previous child custody decree at the end of the deployment, as appropriate.<sup>12</sup>**

**(e) This section shall not limit the power of a court of competent jurisdiction to permanently modify a decree of child custody or visitation in the event that a parent volunteers for permanent military duty as a career choice,<sup>3</sup>** regardless of whether the parent volunteered for permanent military duty while a member of the armed forces.

[Acts 2008, ch. 793, § 1.]

<http://www.michie.com/tennessee/lpext.dll?f=templates&fn=main-h.htm&cp=>

## TEXAS

Texas- TEX. FAM. CODE §§ 156.105, 153.3161 (2007)

156.105 short

§ 156.105. MODIFICATION OF ORDER BASED ON MILITARY

DEPLOYMENT. **(a) The military deployment outside this country of a person who is a possessory conservator or a joint managing conservator without the exclusive right to designate the primary residence of the child is a material and substantial change of circumstances sufficient to justify a modification of an existing court order or portion of a decree that sets the terms and conditions for the possession of or access to a child.<sup>8</sup>**

**(b)** If the court determines that modification is in the best interest of the child, the court may modify the order or decree to provide in a manner consistent with Section 153.3161 for limited possession of the child during the period of the deployment by a person designated by the deployed conservator.

153.3161

§ 153.3161. **LIMITED POSSESSION DURING MILITARY DEPLOYMENT. (a) In addition to the general terms and conditions of possession required by Section 153.316, if a possessory conservator or a joint managing conservator of the child without the exclusive right to designate the primary residence of the child is currently a member of the armed forces of the state or the United States or is reasonably expected to join those forces, the court shall:**

**(1) permit that conservator to designate a person who may exercise limited possession of the child during any period that the conservator is deployed outside of the United States; and**

**(2) if the conservator elects to designate a person under Subdivision (1), provide in the order for limited possession of the child by the designated person under those circumstances, subject to the court's determination that the limited possession is in the best interest of the child.**

**(b) If the court determines that the limited possession is in the best interest of the child, the court shall provide in the order that during periods of deployment:**

**(1) the designated person has the right to possession of the child on the first weekend of each month beginning at 6 p.m. on Friday and ending at 6 p.m. on Sunday;**

- (2) the other parent shall surrender the child to the designated person at the beginning of each period of possession at the other parent's residence;
  - (3) the designated person shall return the child to the other parent's residence at the end of each period of possession;
  - (4) the child's other parent and the designated person are subject to the requirements of Sections 153.316(5)-(9);
  - (5) the designated person has the rights and duties of a nonparent possessory conservator under Section 153.376(a) during the period that the person has possession of the child; and
  - (6) the designated person is subject to any provision in a court order restricting or prohibiting access to the child by any specified individual.
- (c) After the deployment is concluded, and the deployed parent returns to that parent's usual residence, the designated person's right to limited possession under this section terminates and the rights of all affected parties are governed by the terms of any court order applicable when a parent is not deployed.

Added by Acts 2005, 79th Leg., ch. 916, § 13, eff. June 18, 2005.  
<http://law.onecle.com/texas/family/153.3161.00.html>

## VIRGINIA

VA. CODE ANN. §§ 20-124.7-20-124.10

### 124.7 Definitions

For purposes of this chapter:

“Deploying parent or guardian” means a parent of a child under the age of 18 whose parental rights have not been terminated by a court of competent jurisdiction or a guardian of a child under the age of 18 who is deployed or who has received written orders to deploy with the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any other reserve component thereof.

“Deployment” means compliance with military orders received by a member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any other reserve component thereof to report for combat operations or other active service for which the deploying parent or guardian is required to report unaccompanied by any family member.

### 124.8

A. **Any court order limiting previously ordered custodial or visitation rights of a deploying parent or guardian due to the parent's or guardian's deployment shall specify the deployment as the basis for the order and shall be entered by the court as a temporary order.** Any such order shall further require the nondeploying parent or guardian to provide the court with 30 days advance written notice of any change of address and any change of telephone number.

B. The court, on motion of the deploying parent or guardian returning from deployment seeking to amend or review the custody or visitation order entered based upon the deployment, **shall set**

**a hearing on the matter that shall take precedence on the court's docket, and shall be set within 30 days of the filing of the motion.** For purposes of this hearing, the nondeploying parent or guardian shall bear the burden of showing that reentry of the custody or visitation order in effect before the deployment is no longer in the child's best interests.

C. This section shall not otherwise preclude a parent or guardian from petitioning for a modification of a custody or visitation order based upon a change in circumstances.

124.9

If no court order exists as to the custody, visitation, or support of a child of a deploying parent or guardian, any petition filed to establish custody, visitation, or support for a child of a deploying parent or guardian shall be so identified at the time of filing by the deploying parent or guardian to ensure that the deploying parent or guardian has access to the child, and that reasonable support and other orders are in place for the protection of the parent-child or guardian-child relationship, consistent with the other provisions of this chapter. Such petition shall be expedited on the court's docket in accordance with § 20-108.

124.10

Any order entered pursuant to § 20-124.8 shall provide that **(i) the nondeploying parent or guardian shall reasonably accommodate the leave schedule of the deploying parent or guardian,<sup>19</sup> (ii) the nondeploying parent shall facilitate opportunities for telephonic and electronic mail contact between the deploying parent or guardian and the child during the deployment period,<sup>4</sup> and (iii) the deploying parent or guardian shall provide timely information regarding his leave schedule to the nondeploying parent or guardian.**

## WASHINGTON

WASHINGTON 26.09.260. Modification of parenting plan or custody decree

(1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child. **The effect of a parent's military duties potentially impacting parenting functions shall not, by itself, be a substantial change of circumstances justifying a permanent modification of a prior decree or plan.**

...

(b) For the purposes of determining whether the parent has failed to exercise residential time for one year or longer, **the court may not count any time periods during which the parent did not exercise residential time due to the effect of the parent's military duties potentially impacting parenting functions.**

...

(11) If the parent with whom the child resides a majority of the time receives temporary duty, deployment, activation, or mobilization orders from the military that involve moving a substantial distance away from the parent's residence or otherwise would have a material effect on the parent's ability to exercise parenting functions and primary placement responsibilities, then:

**(a) Any temporary custody order for the child during the parent's absence shall end no later than ten days after the returning parent provides notice to the temporary custodian, but shall not impair the discretion of the court to conduct an expedited or emergency hearing for resolution of the child's residential placement upon return of the parent<sup>18</sup> and within ten days of the filing of a motion alleging an immediate danger of irreparable harm to the child. If a motion alleging immediate danger has not been filed, the motion for an order restoring the previous residential schedule shall be granted; and**

**(b) The temporary duty, activation, mobilization, or deployment and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer residential placement from the parent who is a military service member.**

(12) If a parent receives military temporary duty, deployment, activation, or mobilization orders that involve moving a substantial distance away from the military parent's residence or otherwise have a material effect on the military parent's ability to exercise residential time or visitation rights, **at the request of the military parent, the court may delegate the military parent's residential time or visitation rights, or a portion thereof, to a child's family member, including a stepparent, or another person other than a parent, with a close and substantial relationship to the minor child for the duration of the military parent's absence, if delegating residential time or visitation rights is in the child's best interest. The court may not permit the delegation of residential time or visitation rights to a person who would be subject to limitations on residential time under RCW 26.09.191.** The parties shall attempt to resolve disputes regarding delegation of residential time or visitation rights through the dispute resolution process specified in their parenting plan, unless excused by the court for good cause shown. Such a court-ordered temporary delegation of a military parent's residential time or visitation rights does not create separate rights to residential time or visitation for a person other than a parent.

## WEST VIRGINIA

W. VA. CODE, § 48-9-404

**(a) If a military parent is required to be separated from a child due to military service, a court shall not enter a final order modifying the terms of an existing parenting plan until ninety days after the military parent is released from military service. A military parent's absence or relocation because of military service must not be the sole factor supporting a change in circumstance or grounds sufficient to support a permanent modification of an existing parenting plan.**



(b) A parenting plan establishing the terms of custody or visitation in place at the time a military parent is called to military service may be temporarily modified to make reasonable accommodation for the parties because of the military parent's service.

(c) A temporary parenting plan pursuant to this section shall provide that the military parent has at least substantial custodial responsibility of the child during a period of leave granted to the military parent during their military service, unless the court determines that it is not in the best interest of the child. If a temporary parenting plan is not issued pursuant to this section, **the nonmilitary custodial parent shall make the child or children reasonably available to the military parent when the military parent has leave to ensure that the military parent has reasonable custodial responsibility and is able to exercise custodial responsibility of the child or children.**

**(d) If there is no existing parenting plan or order establishing the terms of custody or visitation and it appears that military service is imminent, upon motion by either parent, the court shall expedite a temporary hearing to establish a temporary parenting plan to ensure the military parent has access to the child, to establish support, and provide other appropriate relief.**

Acts 2009, c. 72, eff. July 9, 2009.

## WISCONSIN

Wisconsin- WIS. STAT. § 767.451 (2007)

NOTE: has provision for temp orders to revert, not noted in chart

Except for matters under s. 767.461 or 767.481, the following provisions are applicable to modifications of legal custody and physical placement orders:

(3) Modification of other physical placement orders. Except as provided under subs. (1) and (2), upon petition, motion or order to show cause by a party, a court may modify an order of physical placement which does not substantially alter the amount of time a parent may spend with his or her child if the court finds that the modification is in the best interest of the child.

(3m) Reinstatement of former physical placement allocation and schedule. **If a party is a service member, as defined in s. 767.41(2)(e)1., and the court modifies an order of physical placement on the basis that the service member has been or will be called to active duty in the U.S. armed forces, notwithstanding sub. (1) the court shall require in the order that the allocation of periods of physical placement and, if applicable, the physical placement schedule that were in effect before the modification are reinstated immediately upon the service member's discharge or release from active duty.**

...

**(c) In an action to modify a legal custody order, if a party is a service member, as defined in s. 767.41(2)(e)1., the court may not consider as a factor in making a determination whether the service member has been or may be called to active duty in the U.S. armed forces and consequently is, or in the future will be or may be, absent from the service member's home.**

(6) Notice. No court may enter an order for modification under this section until notice of the petition, motion or order to show cause requesting modification has been given to the child's parents, if they can be found, and to any relative or agency having custody of the child.

(6m) Parenting plan. In any action to modify a legal custody or physical placement order under sub. (1), the court may require the party seeking the modification to file with the court a parenting plan under s. 767.41(1m) before any hearing is held.

(7) Transfer to department. The court may order custody transferred to the department only if the department agrees to accept custody. If the court orders custody transferred to the department, the order transferring custody shall include the findings and order specified in s. 767.41(3)(am).

(8) Petition, motion, or order to show cause. A petition, motion, or order to show cause under this section shall include notification of the availability of information under s. 767.105(2).