

HB

334

<target><bill>HB 334</bill><subject>HB
334</subject><comm>SF26</comm></target>

SENATE FINANCE COMMITTEE REPORT

DATE: 3/26/10

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Finance Committee considered CS FOR HOUSE BILL NO. 334(RLS)

HB 334 MILITARY DEPLOYMENT AND CHILD CUSTODY

"An Act establishing child custody, modification, and visitation standards for a military parent; and amending Rules 77 and 99, Alaska Rules of Civil Procedure."

and recommends:

- be replaced with SCS or CS _____ (_____)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

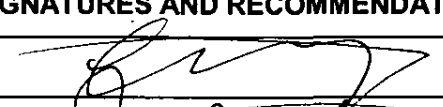

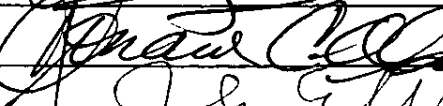
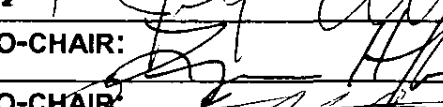
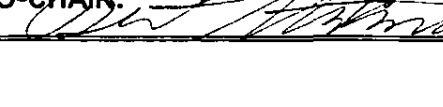


NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
COR ^{CRT}	2/16			✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Huggins	X			
	Thomas	✓			
	Egan	✓			
	Olson			X	
	Ellis	✓			
CO-CHAIR: 	Hoffman	✓			
CO-CHAIR: 	Stedman	✓			

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 334(MLV)
(H) Publish Date: 2/24/10

Identifier (file name): _____ Dept. Affected: Alaska Court System
Title Military Deployment and Child Custody RDU Trial Courts
Component _____
Sponsor Representative Thomas Component Number _____
Requester _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

House Bill 334 changes some of the provisions that govern child custody in cases where a parent is a service member who is or recently has been deployed. Two provisions have the potential to impact the court system. The first is the right to a custody hearing within 10 days after a service member requests the hearing after returning from deployment. Courts already frequently set these hearings on an expedited basis and this change will probably not have a significant impact on current practices. However, should a significant number of hearings be sought soon after the return of a large number of deployed service members, this may create scheduling problems.

The second possible impact involves internet testimony when a deployed parent wishes to participate in a custody hearing. The court can currently use this technology in the courts most likely to hear these cases (Anchorage, Fairbanks and Palmer). Any associated costs are likely to be minor and can be absorbed without the need for additional funding.

Prepared by: Doug Wooliver, Administrative Attorney
Division: Alaska Court System
Approved by: Doug Wooliver for Christine Johnson, Administrative Director
Alaska Court System

Phone 907-463-4750
Date/Time 2-16-10 @ 12:00 pm
Date 2/16/2010

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 334(MLV)
 (H) Publish Date: 2/24/10

Identifier (file name): _____ Dept. Affected: Alaska Court System
 Title Military Deployment and Child Custody RDU Trial Courts
 Component _____
 Sponsor Representative Thomas
 Requester _____ Component Number _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

House Bill 334 changes some of the provisions that govern child custody in cases where a parent is a service member who is or recently has been deployed. Two provisions have the potential to impact the court system. The first is the right to a custody hearing within 10 days after a service member requests the hearing after returning from deployment. Courts already frequently set these hearings on an expedited basis and this change will probably not have a significant impact on current practices. However, should a significant number of hearings be sought soon after the return of a large number of deployed service members, this may create scheduling problems.

The second possible impact involves internet testimony when a deployed parent wishes to participate in a custody hearing. The court can currently use this technology in the courts most likely to hear these cases (Anchorage, Fairbanks and Palmer). Any associated costs are likely to be minor and can be absorbed without the need for additional funding.

Prepared by: Doug Wooliver, Administrative Attorney Phone 907-463-4750
 Division Alaska Court System Date/Time 2-16-10 @ 12:00 pm
 Approved by: Doug Wooliver for Christine Johnson, Administrative Director Date 2/16/2010
Alaska Court System



REPRESENTATIVE BILL THOMAS

ALASKA STATE LEGISLATURE DISTRICT 5

e-mail: Representative.Bill.Thomas@legis.state.ak.us
webpage: www.akrepublicans.org/thomas/

State Capitol

Juneau AK, 99801-1182

907-465-3732

888-461-3732

FAX 907-465-2652

Sectional HB 334

"An Act establishing child custody, modification, and visitation standards for a military parent; and amending Rule 99, Alaska Rules of Civil Procedure."

Section 1: AS 25.20 adds a new section:

Sec. 25.20.095. Custody and visitation proceedings involving a military parent.

(a) Military service cannot be a factor in granting or denying a petition for custody or visitation.

(b) – (e) Upon receiving deployment orders a military parent shall receive an expedited hearing and the parent can delegate visitation rights to a family member if doing so is within a child's best interests. Any petition for custody or visitation will be given the same protections as afforded under the SCRA. Additionally, rights or protections regarding custody or visitation can only be waived writing

(f) A court order entered under this section must require

- (1) a child be made reasonably available during periods of leave
- (2) the facilitation of written and electronic contact between the deployed parent and the child, preferably electronic contact with a video image
- (3) the deployed parent provide timely leave information

(g) Factors in determining a child's best interests. Cross reference to AS 25.24.150(c) and AS 25.24.150(g)

(h) Definition of "deployment," "family member," and "military service"

Section 2: AS 25.20.110 is amended by adding new subsection to read:

(d) Except as provided in (e) – (h) military service cannot be a factor in finding a change of circumstances on a motion to modify child custody or visitation

(e) A court may provide for a temporary modification of a custody or visitation order to make reasonable accommodation for a deployment. The temporary order must include provisions for

- (1) custody or visitation during periods of leave if doing so is within the child's best interests.
- (2) termination of the temporary order within 10 days of notification of the deployed parent's ability to resume custody if doing so is within the child's best interests. The non-deployed parent shall bear the burden of proof.

(3) a hearing if a child of a deployed parent moved out of state and the non-deployed parent files a motion that alleges that resumption of the permanent custody order will result in immediate danger of irreparable harm to the child or that the presumption under AS 25.24.150(g) exists

(4) delegation of the deployed parent's visitation rights to a family member if doing so is within the child's best interests.

(5) immediate notification from the non-deployed parent of a change of address or contact information.

(f) A court shall expedite a hearing to modify custody or visitation on a motion made by a parent who is subject to deployment.

(g) Factors in determining a child's best interests. Cross reference to AS 25.24.150(c) and AS 25.24.150(g)

(h) Definition of "deployment," "family member," and "military service." Cross reference to AS 25.20.095

Section 3: AS 25.24.150 is amended by adding new subsection to read:

(l) Except as provided in AS 25.20.095 and 25.20.110 military service cannot be a factor in determining the best interest of the child under (c) of this section.

Section 4: The uncodified law of the State of Alaska is amended by adding a new section to read:

(a) Authorization for Telephonic, Video, or Internet Participation.

The court shall allow video or Internet testimony if the hearing or deposition involves the custody or visitation of a child of a parent who is deployed, as that term is defined in AS 25.20.095, at the request of the deployed parent.



REPRESENTATIVE BILL THOMAS

ALASKA STATE LEGISLATURE DISTRICT 5

e-mail: Representative.Bill.Thomas@legis.state.ak.us
webpage: www.akrepublicans.org/thomas/

State Capitol

Juneau AK, 99801-1182

907-465-3732

888-461-3732

FAX 907-465-2652

Explanation of Differences Between SB 210(JUD) and HB 334 (RLS)

Page 1, Lines 6-9

Language added to HB 334 which clarifies that one of the purposes of the bill is to ensure that the deployed parent is afforded the maximum opportunity to have contact with his/her child during the period of deployment.

Page 2, Line 10

HB 334 deletes the reference to "an additional 10 days' notice" as it is inconsistent with the intent of the bill to expedite hearings for deploying parents.

Page 2, Lines 13-14

HB 334 adds language that a parent may waive their rights in writing or on the record during a court proceeding.

Page 2, Line 19

HB 334 requires "each parent," not just the nondeployed parent, to facilitate contact between the other parent.

Page 3, Line 18

HB 334 inserts a definition of "parent" that includes the legal guardian of a child.

Page 4, Line 31

HB 334 references the definition of "parent" that is mentioned above.

Page 5, Lines 20-25

HB 334 has an indirect court rule amendment due to the requirement for an expedited hearing if a deploying parent requests one. The court rule being amended is Rule 77.

Page 5, Lines 26-31 and Page 6, Lines 1-2

HB 334 has a conditional effect. The sections of the bill pertaining to the change to Rule 77 will not take effect unless they receive to 2/3 vote of each body of the legislature.



REPRESENTATIVE BILL THOMAS

ALASKA STATE LEGISLATURE DISTRICT 5

e-mail: Representative.Bill.Thomas@legis.state.ak.us

webpage: www.akrepublicans.org/thomas/

State Capitol

Juneau AK, 99801-1182

907-465-3732

888-461-3732

FAX 907-465-2652

Sponsor Statement HB 334

“An Act establishing child custody, modification, and visitation standards for a military parent who is deployed; and amending Rule 99, Alaska Rules of Civil Procedure.”

For nearly a decade, the War on Terror has required Alaska to frequently deploy our active military, reserve, and National Guard troops. This high deployment tempo is putting even more pressure on our already strained military families. Children who are already in unusual circumstances due to their parents' military careers are being put in the situation of having to deal with a deployed parent. It is no wonder that the divorce rate for members in the military has been steadily rising for the past decade.

However, while the travesty of divorce is hard enough on all members of a family, the court system is also finding it difficult to balance the issues of deployment with child custody issues. A deploying family member now must fight a battle on two fronts, the one in the Middle East, and the one at home. HB 334 ensures that the court system has clear directive as to how it should deal with a deploying military member if they should find themselves in the midst of a child custody battle. It affords them the right to an expedited hearing so that matters can be taken care of before deployment, if necessary, and it also allows the member to delegate their visitation rights to another family member in order for the child to maintain all familial connections. Most importantly, HB 334 requires that a court *not* consider deployment when determining child custody. Our men and women are sacrificing enough for our country, their military service should not be a reason in itself for them to lose custody of their children.

In 2009, because of the potential for conflict with current states child custody laws, congress deemed military child custody to be the responsibility of individual states.

HB 334 includes the following items and restrictions:

- A definition of a military absence.
- Assurance that military duties cannot be considered when determining child custody.
- Allowance of expedited hearings with restrictions.
- The right to delegate visitation to another family member.
- Allowance of electronic testimony.
- Limitations on temporary custody orders.

In recognizing that the federal government should not legislate a Military Child Custody statute, that Alaska has many service-members, that the United States military currently has a high rate of deployment, and that military divorce rates continue to rise, now is a good time for the Alaska Legislature to address military child custody.



REPRESENTATIVE BILL THOMAS

ALASKA STATE LEGISLATURE DISTRICT 5

e-mail: Representative.Bill.Thomas@legis.state.ak.us

webpage: www.akrepublicans.org/thomas/

State Capitol

Juneau AK, 99801-1182

907-465-3732

888-461-3732

FAX 907-465-2652

Sectional

HB 334

"An Act establishing child custody, modification, and visitation standards for a military parent; and amending Rule 99, Alaska Rules of Civil Procedure."

Section 1: AS 25.20 adds a new section:

Sec. 25.20.095. Custody and visitation proceedings involving a military parent.

(a) Military service cannot be a factor in granting or denying a petition for custody or visitation.

(b) – (e) Upon receiving deployment orders a military parent shall receive an expedited hearing and the parent can delegate visitation rights to a family member if doing so is within a child's best interests. Any petition for custody or visitation will be given the same protections as afforded under the SCRA. Additionally, rights or protections regarding custody or visitation can only be waived in writing

(f) A court order entered under this section must require

(1) a child be made reasonably available during periods of leave

(2) the facilitation of written and electronic contact between the deployed parent and the child, preferably electronic contact with a video image

(3) the deployed parent provide timely leave information

(g) Factors in determining a child's best interests. Cross reference to AS 25.24.150(c) and AS 25.24.150(g)

(h) Definition of "deployment," "family member," and "military service"

Section 2: AS 25.20.110 is amended by adding new subsection to read:

(d) Except as provided in (e) – (h) military service cannot be a factor in finding a change of circumstances on a motion to modify child custody or visitation

(e) A court may provide for a temporary modification of a custody or visitation order to make reasonable accommodation for a deployment. The temporary order must include provisions for

(1) custody or visitation during periods of leave if doing so is within the child's best interests.

(2) termination of the temporary order within 10 days of notification of the deployed parent's ability to resume custody if doing so is within the child's best interests. The non-deployed parent shall bear the burden of proof.

(3) a hearing if a child of a deployed parent moved out of state and the non-deployed parent files a motion that alleges that resumption of the permanent custody order will result in immediate danger of irreparable harm to the child or that the presumption under AS 25.24.150(g) exists

(4) delegation of the deployed parent's visitation rights to a family member if doing so is within the child's best interests.

(5) immediate notification from the non-deployed parent of a change of address or contact information.

(f) A court shall expedite a hearing to modify custody or visitation on a motion made by a parent who is subject to deployment.

(g) Factors in determining a child's best interests. Cross reference to AS 25.24.150(c) and AS 25.24.150(g)

(h) Definition of "deployment," "family member," and "military service." Cross reference to AS 25.20.095

Section 3: AS 25.24.150 is amended by adding new subsection to read:

(l) Except as provided in AS 25.20.095 and 25.20.110 military service cannot be a factor in determining the best interest of the child under (c) of this section.

Section 4: The uncodified law of the State of Alaska is amended by adding a new section to read:

(a) Authorization for Telephonic, Video, or Internet Participation.

The court shall allow video or Internet testimony if the hearing or deposition involves the custody or visitation of a child of a parent who is deployed, as that term is defined in AS 25.20.095, at the request of the deployed parent.



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

OFFICE OF THE GOVERNOR
MAIL ROOM

NOV 23 2009

NOV 16 2009

The Honorable Sean Parnell
Governor of Alaska
State Capitol
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Parnell:

I am writing to you about a matter that is of critical concern to me - the support of our Service members and their families in child custody disputes. I am deeply committed to preventing any inequitable treatment our deployed soldiers, sailors, airmen, and Marines may face in child custody disputes as a result of their service to the Nation.

I ask that you consider how your state can address the special difficulties facing military parents who must balance the demands of military service with the equally compelling demands of parenthood. These demands are often felt most acutely when military members must deploy and either lose visitation time or face challenges to existing custody orders by a parent to whom the military member is not married.

To date, thirty states have passed laws that address some aspect of the difficulties facing parents who must temporarily give up custody of their children or who must forgo visitation when called to take up the burdens of the nation. One possible legislative response could include the presumption that the prior custody agreement be restored upon the military member's return from deployment. Another legislative response could be to allow a parent with visitation rights the ability to delegate those rights to a third party during the deployment. I note that Alaska has not passed legislation to address military and visitation issues.

The Department recognizes the complexities of such cases and the difficulties in balancing the interests of the Service member against the best interests of the child. The Department also believes that the States are in the best position to balance the needs of both within the context of existing domestic relations laws.

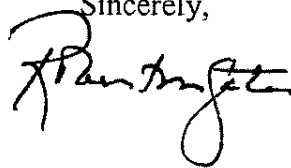
Because of the potential impact this could have on the full spectrum of our



military families, I am writing you directly to let you know that we stand ready to assist you with any additional information that you may need to address this issue. Mr. Ed Kringer, my staff contact, can provide a more detailed description about how other states have approached this issue. Your staff can contact him at 703-602-4949, ext. 114, or at ed.kringer@osd.mil.

Thank you for all you do for our Service members and their families. Helping them with this extremely important family concern would provide a great service to our men and women in uniform, as well as to your State and the nation as a whole.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Kringer". The signature is written in a cursive style with a large initial "E" and "K".

Sean Parnell, GOVERNOR

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
OFFICE OF THE COMMISSIONER

P. O. BOX 5800
Ft Richardson, ALASKA 99505-5800
PHONE: (907) 428-6003
FAX: (907) 428-6019

February 26, 2010

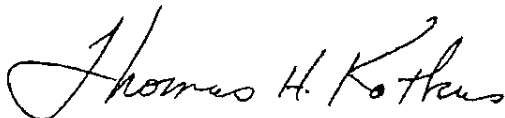
Rep. Bill Thomas:

Members of the United States Armed Forces train very hard to meet the high standards we set as a nation for excellence. These standards are important to protect the lives of each individual member, but also to protect the fellow Soldiers, Airmen, Marines, and Seamen who go into battle together.

The members of the Armed Forces need to be focused on the mission they are about to execute and not have any distracters that could jeopardize the safety of the team or success of the mission. The number one distraction for deployed military members is family concerns. There is a loop-hole in Alaska Statute that allows child custody hearings to take place while a military member is deployed. This must be stopped.

I fully support the efforts of the Rep. Bill Thomas and the Veterans Caucus to correct this problem by sponsoring House Bill 334. Please protect the troops by allowing them to focus on the mission while deployed. Passing this bill will improve morale and allow families to deal with issues in person between deployments.

Sincerely,



Brigadier General Thomas H. Katkus
Commissioner

NO RESOLUTION PRESENTED HEREIN REPRESENTS THE POLICY OF THE ASSOCIATION UNTIL IT SHALL HAVE BEEN APPROVED BY THE HOUSE OF DELEGATES. INFORMATIONAL REPORTS, COMMENTS AND SUPPORTING DATA ARE NOT APPROVED BY THE HOUSE IN ITS VOTING AND REPRESENT ONLY THE VIEWS OF THE SECTION OR COMMITTEE SUBMITTING THEM.

106

AMERICAN BAR ASSOCIATION

**SECTION OF FAMILY LAW
STANDING COMMITTEE ON LEGAL ASSISTANCE FOR MILITARY PERSONNEL
STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS**

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association opposes the enactment of federal
2 legislation that would:
3
4 (a) create federal-question jurisdiction in child custody cases, including cases
5 involving servicemember-parents;
6
7 (b) dictate case outcomes or impose evidentiary burdens in state child-custody
8 matters involving servicemember-parents;
9
10 (c) co-opt the discretionary authority of state courts, in cases involving
11 servicemember-parents, to determine the best interests of the child and award custody
12 accordingly; and
13
14 (d) pre-empt the growing body of state laws that comprehensively address
15 servicemember domestic relations matters, including child custody.
16
17 FURTHER RESOLVED, That the American Bar Association urges states to enact
18 legislation prohibiting denial of child custody to a servicemember based solely on absence due
19 to military deployment.

REPORT

We Americans owe many things to those who disproportionately bear the burden of national sacrifice, but bad law is not one of them. Today as always, the American Bar Association is as resolutely committed to the legal rights of American military members as it is to those of America's children. Yet there can be no Solomon-like splitting of interests when it comes to legislation that, in the name of deployed servicemembers' parental rights, would create a federal child custody law that usurps the historic primacy of the states in domestic relations law and relegates the best interests of the child to a secondary consideration in custody disputes.

Such legislation was kept out of the Fiscal Year 2009 National Defense Authorization Act at the eleventh hour. Similar measures had been introduced in prior sessions of Congress, and there is every reason to believe that this measure will keep resurfacing until either passed, or finally dispatched after a full vetting. Should such a measure re-surface, the ABA urges Congress to reject in its entirety this unsound incursion into the realm of the states, however well-intentioned its proponents, with the understanding that the rights of servicemembers and their children are best served within the existing framework of state laws and court-integrated social services, and the formidable procedural protections already built into the federal Servicemembers Civil Relief Act (SCRA).

The Recent Legislation

The latest iteration of the opposed legislation, section 4510 of H.R. 5658, 110th Congress, would have amended 50 U.S.C. App. § 521, the SCRA, by adding language dictating outcomes in child custody cases, where a servicemember parent had legal custody of the child at the time the parent was deployed to a contingency operation such as Iraq or Afghanistan. The bill would have compelled courts to restore custody of the child to the servicemember parent upon his or her return home post-deployment, unless it could be demonstrated by "clear and convincing evidence" that it was not in the child's best interest to have custody restored to the returning servicemember parent. The bill also would have prohibited a court, in deciding the child's interests, from considering how a servicemember's extended absence due to deployment may have affected those interests. The bill further would have prohibited change in child custody while a servicemember was deployed, through modification of a child custody arrangement that existed at the time of deployment, absent clear and convincing evidence that the change was in the child's best interests.

The Threat to Existing, Effective Legal Mechanisms

On its face, the proposition that an American servicemember must not lose custody of his or her child by virtue of service to our country in distant danger zones seems unassailable. On the other hand, is it ever reasonable to suggest that a court, in deciding a child's best interest, be prohibited from even considering how a parent's prolonged military deployment, *among other factors*, might affect the child's-best-interests analysis? The reality is that conflicting interests within separated families do not lend themselves to inflexible legal prescriptions. Such matters must be

decided on a case-by-case basis, always focusing on the best interest of the child as the primary factor.

Wielding the club of a federal child-custody law that pre-ordains pro-servicemember outcomes in these cases would compromise the generally-accepted "best interests of the child" standard governing custody decisions.

- A. Creating a Federal Law of Child Custody for These Servicemember-Parent Cases Would Invade the Province of State Courts and Disrupt Existing, Effective Legal Frameworks for Resolving Child Custody Disputes.

Child Custody Is Not a Federal Question.

The opposed legislation would create a new substantive legal interest in restored child-custody rights, under the SCRA. It would thus create federal-question jurisdiction over covered child custody cases, forcing federal judges to venture into the *terra incognita* of child custody jurisprudence when a covered case is originally filed in federal court pursuant to 28 U.S.C. §1331 or removed to federal court pursuant to 28 U.S.C. §1446.

Such an outcome would run counter to a long and unbroken history of federal deference to state courts on subject matters not expressly reserved to federal judicial authority. In particular, federal courts have not entertained claims addressing child custody or visitation, or other "adjustments to family status." See *Ankenbrandt v. Richards and Kessler*, 504 U.S. 689 (1992); *Thompson v. Thompson*, 798 F.2d 1547 (9th Cir. 1986), aff'd 484 U.S. 174 (1988); *Cole v. Cole*, 693 F.2d 1083 (4th Cir. 1980); *Doe v. Doe*, 660 F.2d 101 (4th Cir. 1981). In *Ankenbrandt*, the Supreme Court observed:

Issuance of [custody] decrees . . . not infrequently involves retention of jurisdiction by the court and deployment of social workers to monitor compliance. As a matter of judicial economy, state courts are more eminently suited to work of this type than are federal courts, which lack the close association with state and local government organizations dedicated to handling that arise out of conflicts over divorce, alimony, and child custody decrees. Moreover, as a matter of judicial expertise, it makes far more sense to retain the rule that federal courts lack power to issue these types of decrees because of the special proficiency developed by state tribunals of the past century and a half. 504 U.S. at 703-04.

The same reasoning must guide Congress in consideration of the next bill purporting to create a federal law of child custody.

Such Legislation Would Tie the Hands of Judges.

Whether these matters are decided in federal or state court, the opposed legislation would tie the hands of judges by mandating a particular result in favor of the servicemember parent returning from deployment. It would mandate automatic restoration of custody to the returning parent, provided that he or she had custody of the child at the time of deployment. In forcing that decision, the opposed rule would bar a court from even considering the effect of prolonged parental absence, due to deployment, on the child's best interests. The court would have no discretion in these custody decisions, absent a showing by "clear and convincing" evidence that the child should not resume residence with that parent.

Even where it could be proven by a preponderance of the evidence that the child's best interests lay with a grant of custody to the other parent, the court would be forced to restore the child to the custody of the returning servicemember, unless the more stringent "clear and convincing" threshold could be met.

The States Are Making Rapid Progress in Addressing These Matters.

The states have moved rapidly and responsibly to address the extraordinarily complex set of family law and other legal issues confronting this generation of servicemembers and their families, of whom so much has been demanded. Nine states have enacted legislation squarely addressing the child custody circumstances at issue in the opposed legislation: Arizona, California, Kansas, Kentucky, Louisiana, Michigan, Mississippi, North Carolina and Virginia. More than 20 states have adopted legislation acknowledging the potentially competing interests of the child and custodial servicemember and seeking to balance those interests within the framework of the individual states family service systems. These recent state statutes provide, or will provide, broad protections of family member interests, addressing not only restoration of custody but representation of the servicemember's interests in state proceedings and incorporation of mental health and other state support services.

The typical emergent state statute goes much further than the opposed federal bill in protecting servicemembers' interests. For example, it provides for electronic testimony by deployed servicemembers and expedited dockets for those wishing to organize their affairs in advance of deployment.

Importantly, many of the new comprehensive state laws, unlike the proposed federal legislation, also address child-visitation for servicemembers who do *not* have custody. Most active-duty servicemembers who have minor children are not custodial parents. Department of Defense regulations generally prohibit first-term single parents from having legal custody of a minor child. Moreover, the military lifestyle often compels the servicemember parent to relinquish custody to the non-servicemember parent.

These state-law solutions, tailored to and consonant with particular state social service systems and the broad array of servicemember parental interests, represent by far the better and more effective remedy.

The U.S. Department of Defense strongly opposes the type of legislation at issue — the department has urged in its position statement on point:

The progress with which the states have embraced the military-specific issues has been phenomenal and shows no indication of waning. Five military custody bills became law in just the first six months of 2008. It would be a mistake to intrude on the significant protections and creativity demonstrated by the states.

The opposed bill would do substantial damage to this significant new line of state-based protections, as federal law would be pre-emptive on the burden of proof question and, in a radical and unprecedented departure from the long history of state dominion over family relations disputes, would mandate custody-dispute outcomes from afar without due consideration of the child's best interests. It must be recognized that, at the end of the day, the creative servicemember-parent protections offered by the new and growing array of state statutes are significantly stronger than those contained in this misguided proposal.

B. This Legislation Would Undermine and Misuse
The Servicemembers Civil Relief Act.

The opposed bill would compromise the purpose and effect of the SCRA by converting it into a results-driven hammer for forcing particular outcomes in child custody cases. Such a misuse of this far-reaching legal shield for American servicemembers and their families would destroy its procedural focus, as it applies to courts and litigation, with its provisions for issuing automatic stays, vacating default judgments and appointing counsel for servicemembers.

As the Department of Defense noted in its opposition:

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. 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.

The opposed initiative would also introduce a real risk of dilution of important protections already found in the SCRA, by creating the possibility of a legal inference that those protections *only* apply to the particular child custody circumstances addressed by the bill, (i.e., the custody rights of servicemembers who had custody pre-deployment and are returning from deployment.)

The Department of Defense also points out that passage of the proposal could leave “other types of domestic cases vulnerable to arguments that the failure to explicitly address them indicates a legislative intent to exclude them” from SCRA procedural protections.”

The SCRA, as it is written, provides clear protections for civil litigants in uniform, including deployed servicemembers in child custody matters, and it means what it says. Doubt as to the scope and reach of this seminal statute's array of servicemember protections must not be legislatively introduced, where no such doubt currently exists.

Damage to the purpose and function of this pre-eminent servicemember-protection statute was a primary consideration of an original sponsoring entity of the instant resolution, the Standing Committee on Legal Assistance for Military Personnel (LAMP), in its decision to strongly oppose the legislative proposal at issue here. LAMP exists to serve and support American servicemembers and their families. While on its face the offending legislation purports to support servicemember parents, the LAMP Committee has concluded that this support is largely illusory, as the bill would do irreparable harm to state-law-based servicemember protections, which are rapidly improving, and upset the well-established legal-social framework for managing child custody cases affecting military and civilian families alike.

C. The Best Interests of the Child Standard Must be Preserved in Custody Cases.

The opposed bill would compromise the best interest of the child standard in custody decisions. To be sure, in fairness to those who leave home to answer their country's call to arms, the mere fact of deployment of a custodial caregiver, standing alone, cannot constitute legal grounds for depriving a servicemember parent of custody. But the proposal in question veers off to the opposite extreme, making restoration of pre-deployment custody *automatic* and relegating the child's interests to a secondary consideration, unless it can be shown by "clear and convincing" evidence that restoring custody to that servicemember-parent would be against the child's best interests. In the murky world of most family relationships, proving anything to a "clear and convincing" certainty is a tall order indeed. The proposed standard thus would turn on its head the generally-accepted "best interests" standard, a deviation that would represent a dangerous precedent that ultimately serves no one's interests, including those of servicemembers or their families.

Additional Considerations

The proposal is also unworkable to the extent that it would only create custody rights in cases involving the actual deployment of a servicemember to a "contingency operation," which means a designated conflict zone such as Iraq or Afghanistan. As the Department of Defense noted, this introduces

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 humanitarian operation, as opposed to a peacekeeping operation, be forced to operate under different laws and perhaps different courts? Few other provisions of the SCRA turn on such arbitrarily imposed distinctions.

Likewise, no protections would be afforded servicemembers who are called up to replace those mobilized and who take their places, yet are not on a humanitarian mission, and those who face military absence due to the nature of the mission – an “unaccompanied tour.” There is no reason why these members of the military should face disparate treatment.

On a separate point, all of the service branches (Army, Navy, Air Force, Coast Guard and Marine Corps) have been developing new Family Care Plan instructions designed to encourage servicemembers to create explicit plans for the handling of child custody issues and other family matters in the event of deployment. Going forward, the revised Family Care Plan instructions, once completed by all the services, should prevent a number of these custody disputes from arising, further obviating a statutory fix that would be far worse than the problem.

Respectfully submitted by:

Anita M. Ventrelli, Chair, Section of Family Law

Donald J. Guter, Chair, Standing Committee on Legal Assistance for Military Personnel

February 2009

GENERAL INFORMATION FORM

Submitting Entities: ABA Section of Family Law
ABA Standing Committee on Legal Assistance for Military Personnel

Submitted By: Anita M. Ventrelli, Chair, Section of Family Law
Donald J. Guter, Chair, Standing Committee on Legal Assistance for
Military Personnel

1. Summary of Recommendation(s).

The Section of Family Law and the Standing Committee on Legal Assistance for Military Personnel (LAMP) of the American Bar Association recommend to the ABA House of Delegates that the ABA urge Congress to oppose any federal legislation that would create a new federal law of child custody controlling resolution of child-custody disputes involving the custodial rights of servicemember-parents. They recommend opposition to such legislation to the extent that it would: create federal-question jurisdiction over these child custody cases; threaten existing procedural protections for American servicemembers found in the Servicemembers Civil Relief Act; co-opt the growing body of state laws that comprehensively address the domestic relations interests of servicemembers; and legislatively dictate outcomes and evidentiary burdens in child-custody cases, while compromising the best-interests-of-the-child standard.

2. Approval by Submitting Entity.

This Recommendation was approved by the Council of the Section of Family Law on October 2, 2008 and by the LAMP Committee on November 14, 2008.

3. Has this or a similar recommendation been submitted to the ABA House of Delegates or Board of Governors previously?

No

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

This Recommendation is consistent with the American Bar Association's 1984 policy urging the legal profession to direct attention to issues affecting children, including the preservation of children's legal rights; the 1995 policy urging respect of the rights of all children in the United States; and the 1993 policy urging amendment of the former Soldiers' and Sailors' Civil Relief Act to clarify and modernize the Act's protections of American servicemembers.

5. What urgency exists which requires action at this meeting of the House?

The latest iteration of the opposed legislation was introduced as part of the Fiscal Year 2009 National Defense Authorization Act. Only at the eleventh hour was this bill, along with other bills amending the Servicemembers Civil Relief Act, purged from the Defense Authorization Act. Congressional staff and observers who closely follow this subject expect the bill to be reintroduced in 2009. Action by the House at this time is necessary to have an influence on Senate and Congressional action.

6. Status of Legislation. (If applicable.)

The opposed bill, section 4510 of H.R. 5658, would have amended 50 U.S.C. App. § 521, the Servicemembers Civil Relief Act. It was introduced in the 110th Congress in 2008. It was not adopted as part of the final FY 2009 National Defense Authorization Act. It is not a currently pending bill, but is expected to be reintroduced.

7. Cost to the Association. (Both direct and indirect costs.)

None.

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals. (List entities to which the recommendation has been referred, the date of referral and the response of each entity if known.)

The Resolution and Report were distributed to the following ABA entities on Nov. 13, 2008, with the request for their co-sponsorship:

Standing Committee on Armed Forces Law,
Standing Committee on Legal Aid and Indigent Defense (SLCAID),
Section of Litigation,
Center for Children and the Law,
General Practice, Solo, and Small Firm Division (Military Committee),
Government and Public Sector Lawyers Division,
Judicial Division,
Section of Individual Rights and Responsibilities, and
Young Lawyers Division.

Government and Public Sector Lawyers Division is reviewing the recommendation; SLCAID will vote on co-sponsorship on Nov. 22, 2008.

10. Contact Persons. (Prior to the meeting. Please include name, address, telephone number and email address.)

Timothy B. Walker
Mustain-Wood Walker et al LLC
6601 S. University Blvd, Ste 200
Centennial, CO 80121-2973
tbwalker10@aol.com
Tel. 303/730-0067

Marshall J. Wolf
Wolf and Akers
2200 One Cleveland Center
1375 East 9th Street
Cleveland, OH 44114-1739
Tel. 216/623-9999
mjwolf@sprintmail.com

John S. Odom, Jr.
Jones Odom Davis & Politz
2124 Fairfield Ave.
Shreveport, LA 71104-2003
Tel. 318-221-1600
john.odom@jodplaw.com

11. Contact Persons. (Who will present the report to the House. Please include email address and cell phone number.)

Timothy B. Walker, Family Law Section Delegate
Mustain-Wood Walker et al LLC
6601 S. University Blvd, Ste 200
Centennial, CO 80121-2973
tbwalker10@aol.com
(O) 303/730-0067
(C) 303 /638-0608

Marshall J. Wolf, Family Law Section Delegate
Wolf and Akers
2200 One Cleveland Center
1375 East 9th Street
Cleveland, OH 44114-1739
(O) 216/623-9999
(C) 216/272-3007
mjwolf@sprintmail.com

EXECUTIVE SUMMARY

1. Summary of the Recommendation

The Recommendation calls for the American Bar Association to urge Congress to oppose legislation that would create a federal law of child custody controlling state custody cases involving servicemember-parents. The Recommendation urges that the legislation be stopped because it would dictate court outcomes in child custody cases, even where the child's best interests do not support that outcome; create federal-question jurisdiction over child custody cases, long the province of state courts; impose federally-mandated evidentiary burdens on state courts; co-opt the growing body of state laws that comprehensively and appropriately address domestic relations matters affecting servicemembers; and cast doubt on existing servicemember protections found in the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. §§ 501-596.

2. Summary of the Issue that the Resolution Addresses

The issue arises from strong concern among child advocates, military legal assistance experts and others that the opposed legislation would inappropriately employ federal fiat to invade the province of the states by dictating court outcomes in child custody cases affecting deployed servicemembers. The opposed legislation provides that deployed servicemembers who had child custody at the time of their deployment would automatically have that custody restored upon their return, irrespective of other considerations affecting the best interests of the child. The opposed legislation would provide that custody could be denied to the returning servicemember in such a case only by a showing of "clear and convincing" evidence that it was not in the child's best interests. The opposed legislation improperly creates federal substantive law and evidentiary rules for custody determinations historically left to state courts. The opposed legislation would misuse the Servicemembers Civil Relief Act, the source of important procedural protections for servicemembers in litigation, to dictate substantive outcomes in custody cases. The legislation would cast doubt of the ample and adequate servicemember protections already found in the SCRA. The opposed legislation would create federal-question jurisdiction over these child custody cases, a role federal courts are ill-equipped to fulfill. The opposed legislation would pre-empt the emerging body of state laws that comprehensively and organically address servicemember domestic relations interests. The essence of the issue is that the opposed legislation is not in the interest of children or servicemembers.

3. Please Explain How the Proposed Policy Position will Address the Issue

The Proposed Policy would influence the United States Senate and the House of Representatives to oppose the legislation and thereby remove the threat to the interests of children and servicemembers posed thereby.

4. Summary of Minority Views

We are aware of no minority views within the ABA.

For deployed Vermont military, help with child custody

By Peter Hirschfeld Vermont Press Bureau - Published: January 20, 2010

MONTPELIER – For military parents deployed to war zones overseas, the toughest battle can often be the child-custody dispute awaiting them back home.

The call to duty, family-law experts told Vermont lawmakers on Tuesday, can be used in court against military parents who split custody of their children with a former spouse or partner. And the impacts, they said, can exacerbate the intense emotional trauma that long deployments inflict on troops and their children.

"We don't have a lot of horror stories here, but boy are they out there in the rest of the country," said Patricia Benelli, a family-law attorney from Chester. "And we're trying to avoid them here."

Lt. Col. Ellen Abbott, a judge-advocate general in the Vermont National Guard, said she had to assist a Vermont soldier who returned from a long deployment to Iraq only to find that his ex-partner had been granted full custody of their child in his absence. It took months of court proceedings and \$23,000 in legal fees, Abbott said, for the man to regain custody of his child.

"It was a very difficult thing for this soldier to go through," Abbott said. "Had we had something in place to provide protections to him, it might have made things easier."

Lawmakers this session will consider a bill that supporters say would provide those protections by addressing the legal pitfalls into which at least some military parents fall. Without such reforms, Benelli said, the state risks "penalizing people in the military for serving their country."

Rep. Maxine Grad, a Waitsfield Democrat and vice-chairwoman of the House Judiciary Committee, introduced the legislation, which now has 88 co-sponsors. With more than 5,000 Vermonters serving as active members of the military, including 1,500 headed for Afghanistan next month, she said it's incumbent upon the state to protect the parental rights of servicemen and women.

When deployment orders come through, Abbott said, many military parents "are afraid to go to court because they're going to take their children away."

Indeed, legal experts said Tuesday, a military deployment can be construed by family-court judges as the "real, substantial and unanticipated change" required by Vermont statutes to amend child-custody arrangements.

Proposed legislation would prevent judges from using deployment-related separation as the sole reason for changing custody or visitation orders.

"I think this bill provides the framework to give assurances to military parents that they won't lose contact with their children either before, during or after their deployment," Abbott said.

The bill would also ensure that parents forced to cede custody or visitation during a deployment could appoint a friend or family member to assume those rights on their behalf. The measure is needed, lawyers said Tuesday, to ensure a continued bond with members of the deployed parent's family.

The legislation additionally ensures contact rights for deployed parents wishing to correspond with their children via telephone, e-mail or Web cameras. Abbott, who herself has been deployed to Iraq, said contact with children is important to sustaining soldiers' morale.

"Being over there I can tell you soldiers live for contact with their children," Abbott said. "We also have soldiers who are devastated when they get no response from their children – none whatsoever. It degrades their ability to focus on the mission and that's what we need – the ability to focus on the mission so they can come back."

The bill would also force family courts to make deployment-related custody hearings priority cases, and allow deployed soldiers to participate in those hearings via phone.

[Login](#). Not a member? [Join now](#)

[Home](#)
[Benefits](#)
[News](#)
[Entertainment](#)
[Shop](#)
[Finance](#)
[Careers](#)
[Education](#)
[Join the Military](#)
[Community](#)

Search for Military News:

HEADLINES

[News Home](#) | [Video News](#) | [Early Brief](#) | [Forum](#) | [Passdown](#) | [Discussions](#) | [Benefit Updates](#) | [Defense Tech](#)

Deployed Troops Battle for Custody

Associated Press | May 07, 2007



She had raised her daughter for six years following the divorce, handled the shuttling to soccer practice and cheerleading, made sure schoolwork was done. Hardly a day went by when the two weren't together. Then Lt. Eva Crouch was mobilized with the Kentucky National Guard, and Sara went to stay with Dad.

A year and a half later, her assignment up, Crouch pulled into her driveway with one thing in mind - bringing home the little girl who shared her smile and blue eyes. She dialed her ex and said she'd be there the next day to pick Sara up, but his response sent her reeling.

"Not without a court order you won't."

Within a month, a judge would decide that Sara should stay with her dad. It was, he said, in "the best interests of the child."

What happened? Crouch was the legal residential caretaker; this was only supposed to be temporary. What had changed? She wasn't a drug addict, or an alcoholic, or an abusive mother.

Her only misstep, it seems, was answering the call to serve her country.

Crouch and an unknown number of others among the 140,000-plus single parents in uniform fight a war on two fronts: For the nation they are sworn to defend, and for the children they are losing because of that duty.

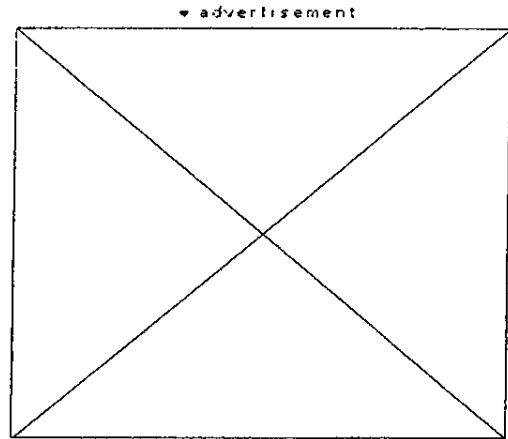
Alert: Tell your public officials how you feel about this issue.

A federal law called the Servicemembers Civil Relief Act is meant to protect them by staying civil court actions and administrative proceedings during military activation. They can't be evicted. Creditors can't seize their property. Civilian health benefits, if suspended during deployment, must be reinstated.

Understanding Military Legal Matters

And yet servicemembers' children can be - and are being - taken from them after they are deployed.

Some family court judges say that determining what's best for a child in a custody case is simply not comparable to deciding civil property disputes and the like; they have ruled that family law trumps the federal law protecting servicemembers. And so, in many cases when a soldier deploys, the ex-spouse seeks custody, and temporary changes become



WHAT'S HOT »

- Odierno: [Iraq Plan B Available if Needed](#)
- Petraeus [Backs Gitmo Prison Closures](#)
- DoD Buzz: [Hill Reacts to New JSF IOC](#)
- Def Tech: [Defense Industry Slapped](#)
- UT Radar: [Mellenkamp for Senate?](#)
- CinC House: [MyCAA Must Survive](#)
- Books: [Hannity Targets Obama](#)
- Money: [Avoid Tax Preparer Fraud](#)

▼ advertisement

lasting.

Even some supporters of the federal law say it should be changed - that soldiers should be assured that they can regain custody of children after they return.

"Now, they've got a great argument when Johnny comes marching home that the child should remain where they are, even though it was a temporary order," says Lt. Col. Steve Elliott, a judge advocate with the Oklahoma National Guard, referring to non-deployed parents.

Military mothers and fathers, meanwhile, speak of birthdays missed. Bonds, once strong, weakened. Returning from duty not to joyful reunions but to endless hearings.

They are people like Marine Cpl. Levi Bradley, helping to fight the insurgency in Fallujah, Iraq, at the same time he battles for custody of his son in a Kansas family court.

Like Sgt. Mike Grantham of the Iowa National Guard, whose two kids lived with him until he was mobilized to train troops after 9/11.

Like Army Reserve Capt. Brad Carlson, fighting for custody of his American-born children in a foreign land after his marriage crumbled while he was deployed to the Middle East and his European wife refused to return to the States.

And like Eva Crouch, who spent two years and some \$25,000 pushing her case through the Kentucky courts.

"I'd have spent a million," she says. "My child was my life ... I go serve my country, and I come back and have to go through hell and high water."

In the midst of World War II, back in 1943, the U.S. Supreme Court held that the soldiers' relief law should be "liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation."

Shielding soldiers, after all, would allow them "to devote their entire energy" to the nation's defense, as the law itself states.

But in child custody cases, the opposite often happens.

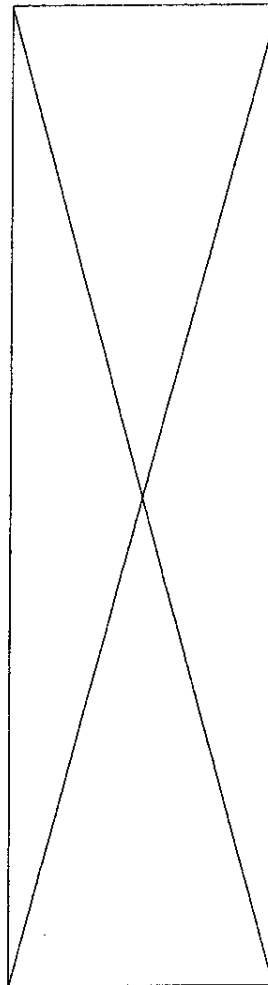
"The minute these guys are getting deployed, the other parent is going, 'I can do whatever I want now,'" says Jean Ann Uvodich, an attorney who represented Bradley. "If you have an ex who wants to take advantage, they can and will. The obstacle is that the judge needs to respect the law."

Bradley had already joined the Marines, and his young wife, Amber, was a junior in high school when their son Tyler came along in September 2003. With Bradley in training, Amber and the baby lived with Bradley's mother, Starleen, in Ottawa, Kan.

When the marriage fell apart two years later, Bradley filed for divorce and Amber signed a parenting plan granting him sole custody of Tyler and agreeing that the boy would live with Starleen while Bradley was on duty.

In August 2005, Bradley deployed to Iraq. A month later, Amber sought to void the agreement and obtain residential custody of Tyler. She didn't fully understand what she had signed, she said later.

Bradley learned of the petition in Fallujah, after calling his mom's house one night to say hello to his son. He was infuriated.



He worked during the day as a mechanic with the 8th Communications Battalion, then headed back to the barracks and, because of the time difference, waited until midnight to call his mother to hear the latest from court.

"My mind wasn't where it was supposed to be," he says. And the distraction cost him. One day he rolled a Humvee he was test-driving. Though he wasn't injured, Bradley was reprimanded.

Uvodich sought a stay under the Servicemembers Civil Relief Act, which provides for a minimum 90-day delay in proceedings upon application by an active duty service member. She argued that Bradley had a right to be present to testify.

But the judge refused to postpone the case, saying he didn't believe it was subject to the federal law because "this Court has a continuing obligation to consider what's in the best interest of the child," court records show.

After a November 2005 hearing, the judge awarded temporary physical custody to Amber. Last summer, that order was made permanent.

Bradley, now 22, is stationed at Camp Lejeune, N.C., awaiting his second deployment to Iraq later this year. He gets to Kansas on leave for about two weeks every six months, and sees Tyler for four days at a time.

"I fought the best I could," he says. "The act states: Everything will be put on hold until I'm able to get back. It doesn't happen. I found out the hard way."

Deployment News and Resources

Oregon Circuit Court Judge Dale Koch, president of the National Council of Juvenile and Family Court Judges, said that as state court judges, those deciding custody cases are obligated to follow their family codes - and "in most states there is language that says the primary interest is the best interest of the child."

"We recognize the competing interests," he says. "You don't want to penalize a parent because they've served their country. On the other hand ... you don't want to penalize the child."

But what does "best interest" really mean? Koch mentions factors such as stability and considering who has been the child's main emotional provider, parameters that conflict directly with military service. So how do you balance those things against upholding a deployed parent's civil rights? When, too, should a temporary change mean just that?

Iowa Guardsman Mike Grantham thought he was serving the best interests of his children when he arranged for his son and daughter to stay with his mother before reporting for duty in August 2002. She lived a few blocks from the kids' school in Clarksville, Iowa, and he figured, "There wouldn't be much disruption."

He had raised Brianna and Jeremy since his 2000 divorce, when ex-wife Tammara turned physical custody over to him.

After mobilizing, Grantham was served with a custody petition from Tammara, delivered to his unit's armory. His lawyer tried twice to request a stay under the federal law. His commanding officer even wrote a letter stating that Grantham's battalion was charged with protecting U.S. facilities deemed national security interests and that his case would cause the entire command structure "to refocus away from the military mission."

The trial judge nevertheless held hearings without Grantham and

temporarily placed the children with Tammara. A year later, though Grantham had returned from duty, the judge made Tammara the primary physical custodian.

An appeals court later sided with Grantham, saying: "A soldier, who answered our Nation's call to defend, lost physical care of his children ... offending our intrinsic sense of right and wrong."

But the Iowa Supreme Court disagreed, saying Tammara was "presently the most effective parent."

Now, Grantham says, his visitation rights mirror those that his ex-wife once had: every other weekend, Wednesdays, and certain holidays - Father's Day, for example.

"There ain't nothing you can do," he says. "Being deployed, you lose your armor."

Military and family law experts don't know how big the problem is, but 5.4 percent of active duty members - more than 74,000 - are single parents, the Department of Defense reports. More than 68,000 Guard and reserve members are also single parents.

Divorce among military men and women also has risen some in recent years, with more than 23,000 enlisted members and officers divorcing in 2005.

Army reservist Brad Carlson lived in Phoenix with his wife, Bianca, and three kids when he volunteered to deploy to Kuwait in 2003. His wife and children were spending that summer with her parents in Luxembourg and expected to remain there until he returned from duty.

A year later, after his wife indicated she wanted to end the marriage and remain in Luxembourg, Carlson filed for divorce in an Arizona court, seeking custody of Dirk, Sven and Phoebe, all American citizens.

The Arizona court dismissed the custody case after Bianca's lawyer argued that jurisdiction belonged in Luxembourg because the children had resided there for at least six months.

Again citing the Servicemembers Act, Carlson's attorney argued that the time the kids spent in Luxembourg shouldn't count toward residency because it came during Carlson's deployment.

A Luxembourg court awarded custody to Bianca, and the kids remain there to this day.

They call him "Bradley" now, he says, instead of "Daddy." They converse in German in stilted long-distance phone calls that provide few precious minutes for a father to absorb missed moments - soccer games, kindergarten, birthdays. On Dirk's 9th, Carlson stood beneath a rainbow-colored birthday banner and had a friend take a digital photo of him holding a sign: "Happy 9th Birthday Dirk!"

Tears fill his eyes when it hits him: "That's how I celebrate."

"I feel really betrayed," Carlson says. "To be able to send me into harm's way ... and my own country can't protect my child custody rights. Why aren't they looking out for me, when I'm looking out for the country?"

The solution, some say, lies in amending the federal law to specify that it does apply in custody cases, and to spell out that jurisdiction should rest with the state where the child resided before a soldier deployed.

Some states aren't waiting for congressional action.

In 2005, California enacted a law saying a parent's absence due to military activation cannot be used to justify permanent changes in custody or visitation. Michigan and Kentucky followed suit, requiring that temporary changes made because of deployment revert back to the original agreement once deployment ends.

Similar legislation has been proposed in Arizona, Florida, Oklahoma, Texas and North Carolina.

"These men and women need to know that when we deploy them, they don't have to worry about being ambushed in our family law court system," says Michael Robinson, a lobbyist who helped write the California and Michigan laws. "The insurgents are doing enough ambushing over there. The only difference between what's occurring there and here is ... it's an emotional bomb."

Crouch knows that all too well.

When she was mobilized back in 2003, Crouch considered having her mother come live in her Frankfort, Ky., home to care for 9-year-old Sara. But her ex-husband, Charles, wanted Sara with him, and Crouch agreed.

"You have to promise me you won't try anything funny," Crouch told him.

He promised.

They drew up a temporary order, moved Sara's belongings 2 1/2 hours east to her dad's place near Ashland, and Crouch headed out - to Iraq, she thought, although she wound up stateside at Fort Knox, providing personnel support to units shipping out.

The fortunate assignment allowed her to visit Sara most weekends, but no one ever brought up the idea of making the temporary situation permanent until Crouch returned.

"Right up until the day I came home there was every indication that I was picking her up," she says.

Charles Crouch says that's true, and acknowledges their agreement was supposed to be temporary. But when the time came for Sara to return to her mom, Charles says his daughter expressed a desire to stay with him. She liked her school, had made new friends.

"I had no intention of trying to talk her into staying or anything," he says. "All I wanted was what was best for my daughter."

Eva Crouch helped fight for the new Kentucky law. Last year, the state Supreme Court cited it in overturning the trial judge's decision granting custody to Charles.

Last September, she got Sara back.

Crouch knows she's one of the lucky few whose cases have happy endings. She's remarried now, and expecting another baby this August. But with 18 years in the military, she knows she could be mobilized again after she gives birth. One thing is clear to her now: Serving her country isn't worth losing her daughter.

"I can't leave my child again - regardless of whether or not I know when I come home, she comes home.

"Still," she says, "I can't."

[More Deployment News](#)