

Considering the Uniqueness of Military Service when Determining Child Custody

Subject: Many divorced Service members (SMs) who are deployed away from their family find that States do not consider the unique aspects of military service when making custody decision. Although the Department believes the welfare of children is paramount, it also believes the demands of military service should not abrogate the parent's rights. There are several protections the Department believes would serve both the parent's rights and the welfare of the children.

Discussion:

Many SMs have custody of, or visitation rights with, children whose other parent is not the SM's current spouse. Absences due to military service can undermine and disrupt existing arrangements, creating stress on parents and children. In spite of the substantially increased activity of our Armed Forces around the world today, not all States have passed legislation designed to address the unique aspects of military service when balancing equities involved in decisions about child custody and visitation rights. The Department thinks States are in the best position to balance such equities, and believes they should at a minimum address certain basic substantive points and consider certain procedural protections as the following:

(1) No permanent orders altering existing custody arrangements should be entered while the custodial parent is unavailable due to military service.

(2) Past absence due to military service should not serve as the *sole* basis for altering a custody order in place prior to the absence.

(3) The custody order in place before the absence of a military parent should be reinstated within a set time upon the return of the military parent, absent proof that the best interests of the child would be undermined. The non-absent parent should bear the burden of proof.

(4) The mere *possibility* of future absence due to military service should not be an appropriate consideration for child custody determinations.

(5) A SM with visitation rights be allowed to petition the court to allow those visitation rights to be delegated to a third person during the SM's absence due to military service.

Additionally, the Department believes States should consider procedural protections to allow expedited hearings and electronic testimony.