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Senate Bill _____

BY: Sen ?????

AN ACT

To be referred to as the “*Georgia Military Parent Equal Protection Act*” that proposes to amend Article 1, Chapter 9 of Title 19 of the Official Code of Georgia Annotated, so as to provide: that when a parent receives military orders for duty, without the accompaniment of family members, his or her national service shall not be considered a change in circumstances for purposes of child custody and visitation; to allow for a military parent during an absence due to military orders to temporarily delegate his or her rights of visitation to other adult members of his or her family; to provide that a non-military custodial parent must reasonably accommodate the military parent’s leave schedule for having access to a child or children; to provide that any court within this state competent to award custody or visitation rights to a child, may hold an expedited temporary hearing to ensure that the military parent has access to a minor child; and, to provide that a service member may provide testimony by electronic means under certain conditions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA

SECTION 1.

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WHEREAS, Georgia's sons and daughters have served heroically in their national service in the Armed Forces of the United States in every major war and conflict from fighting with General Oglethorpe's militia at the Battle of Bloody Marsh in 1742, the Revolutionary War, the War Between the States, both World Wars, the Korean Conflict and Vietnam, and today in the War on Terrorism in Iraq, Afghanistan, and many other remote locations; and,

WHEREAS, within our proud State: there are twelve major military installations and the Uniformed Public Health Service Corp of U.S. Center for Disease Control; 70,222 active duty Soldiers, Sailors, Airmen and Marines with their 102,899 family members; 28,299 Reservist and National Guardsmen with their 40,890 family members; and 177,495 military retirees including their family members; and,

WHEREAS, the gender and marital demographics of the Armed Forces have radically changed in the last 25 years such that more women and married individuals are in military service today; and, their military service brings unprecedented upheavals in caring for their children and preserving their families while the military parents provide for our National Defense; and,

WHEREAS, under The Total Force Concept of our National Security Policy, the Reserve Components (Reserves and National Guard) are now fully integrated into National Defense Contingency Operations; and, these forces have seen an unprecedented operational and contingency tasking through activation and mobilization; and,

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WHEREAS, a public policy should exist that recognizes that patriotic service in support of our national defense should not be viewed as an impairment or liability to their parental rights in having custody or visitation with their children; and,

WHEREAS, National Security requirements often provide little notice to military members for temporary duty assignments, rapid deployments in support of contingency operations; or, for the mobilization of members of the National Guard or Reserves; and, servicemembers are often required to perform extended service in remote locations where family members are not allowed to accompany them, or for which the children's best interest are served by temporarily changing custody to the other parent in their absence until they can return; and, upon such events there can arise a crisis in their existing parenting plans for custody and visitation arrangements of minor children of service members even though the military member has a Family Care Plan in place; and,

WHEREAS, service members should be protected, as should their minor children, from the loss, or fear of loss, of their existing custody or visitation arrangements due to their military status, or from the disruption of their children's contacts with other family members due to the military parent's absence when pursuant to military orders for remote and unaccompanied duty, temporary duty, deployment, or mobilization; and,

WHEREAS, the other family members of a service member, such as the grand parents, aunts, and uncles to the children, or the military member's current spouse, who may have half-siblings of the child, can continue to provide love, comfort, care, and continuity to the children of military

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parents through temporarily delegated visitation when a service member is absent due to military orders; and,

WHEREAS, the delay due to the regular schedule of court hearings create irreparable harm to military parents, their children, and their families; and, when they cannot appear in person before a court due to their military orders, they need to be able to present their case in an expedited hearing or to use electronic means to give testimony; and,

WHEREAS, the use of expedited hearings and testimony by electronic means, at the request of the service member who is absent or about to depart, would aid and promote fair, efficient, and prompt judicial processes for the resolution of family law matters, and specifically those where the best interests of a child or children of the service member must be determined; and,

WHEREAS, the Secretary of Defense for the United States recognizes there is degradation in the morale and readiness of service members when they are faced with the permanent loss of their status as a custodial parent; or with the interference of their family's contacts with a child due to deployments or military service; and, that such loss of morale creates a negative impact upon the readiness of the armed forces and is a detriment to recruiting into an All Volunteer Force; and, in furtherance of this concern, the Secretary of Defense has called upon the Governor of Georgia to provide relief to service members as has now occurred in more than 20 other sister states.

SECTION 2.

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Article 1, Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to the general provisions of Child Custody Proceedings, is amended by now adding a new Code section to read as follows:

“§19-9-8. Custody rights, delegation of visitation, expedited hearings and electronic communication with the court when a parent receives military orders for duty, without the accompaniment of family members

(a) *Definitions.* As used in this Code section, the term:

(1) "Deploying parent" means a military parent or a guardian of a child under the age of 18 whose parental rights or guardianship have not been terminated by a court of competent jurisdiction; and, who is deployed or who has received written orders to a remote and unaccompanied (by dependents) assignment, or to serve in a temporary duty assignment, or to deploy with the United States Army, Navy, Air Force, Marine Corps, Coast Guard, United States Public Health Service Commissioned Corps; National Oceanic and Atmospheric Administration Commissioned Corp; National Guard, or any Reserve component thereof.

(2) "Deployment" means military service in compliance with military orders received by a member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, United States Public Health Service Commissioned Corps; National Oceanic and Atmospheric Administration Commissioned Corps; National Guard, or any other Reserve component thereof to report for combat operations, contingency operations, peacekeeping operations, a temporary duty (TDY) assignment, a remote or unaccompanied tour of duty, or other active service for which the military parent is

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required to report and to be unaccompanied by any family members. The term shall also encompass any military service that includes a period during which a military parent is listed as missing in action (MIA), a prisoner of war (POW), or remains subject to his or her deployment orders on account of sickness, wounds, leave, or other lawful cause. It shall not apply to any military parent who is absent without leave (AWOL) or considered a deserter from the armed forces.

(3) “Military parent” means a natural or adoptive parent or court appointed guardian of a child under the age of eighteen; whose parental or guardianship rights have not been terminated by a court of competent jurisdiction; and, who is on active duty, retired from active or reserve service, or a member of a Reserve Component of the United States Armed Forces. Where both parents are on active duty service, retired from the armed forces, or a member of a Reserve Component or National Guard, then each shall be considered as a military parent.

(4) “Mobilization” means the recall to active duty of a retired service member, or the call-up of a National Guard or Reserve Component service member to extended active duty status. For purposes of this definition, mobilization does not include National Guard or Reserve annual or weekend training.

(5) “Non-deploying parent” means a parent or guardian not subject to deployment, or in the case where both parents are military parents, then the military parent who is not being deployed.

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(6) “Permanent Change of Station” (PCS) means the permanent relocation of a military parent from his or her present duty assignment location to another duty location. A Permanent Change of Station is distinguished from a Temporary Duty assignment or Unaccompanied Remote assignment in that the service member will not be returning to his or her former duty assignment location.

(7) “Temporary Duty” (TDY) means the temporary transfer of a service member from one military installation to a different location for a period usually less than 180 days in order to accomplish training, assist in the performance of any military mission, or for medical treatment. A Temporary Duty assignment is distinguished from a Permanent Change of Station in that the service member will return to his or her permanent duty location upon the completion of the Temporary Duty assignment.

(8) “Unaccompanied Remote Assignment means a tour of duty by a military parent that will be in excess of 180 days but less than 36 months to a location where family members are not permitted, or for which the military parent orders do not include his or her dependents to travel with them.

(b) *Policy of this state as to military service, visitation and custody.* Whenever a superior or juvenile court judge of this State determines an issue of custody or visitation under O.C.G.A. §19-9-3, the national service obligations by a military parent shall be a neutral

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factor in the court's consideration of either fitness or best interests of a child. When deciding custody or visitation issues, no court or judge of this state shall show a bias for a non-deploying parent or a prejudice against a military parent solely on the basis that his or her military service may require them to be temporarily away from the child.

(c) Military service relocation not sole factor in awarding or modifying permanent custody or visitation: Active military service, deployment, or the potential for serving on future deployments may not be the sole factor in a court determining or modifying custody under O.C.G.A. §19-9-3. Upon a Permanent Change of Station and relocation of a military parent that causes a material and substantial change in circumstances, the court shall consider and apply those factors set forth in O.C.G.A. §19-9-3(a)(3). However, the court shall further afford a military parent a presumption which recognizes that all military families are transient and that federally funded and inspected family support services, extended child care, and health care facilities are in place at all military installations to serve and assist military parents and children in their relocation. In awarding visitation, the court shall provide for reasonable parenting time to either parent, set cost-sharing for transportation of the children, and impose an affirmative duty upon the parents to cooperate and assist in transiting the children for the established periods of custody and visitation.

(d) Date of entry of final order. If a military parent is required to be temporarily separated from a child due to a remote assignment, deployment, or for any reason other than a Permanent Change of Station of the military parent, a court of this state shall not enter a final order that permanently modifies the terms of an existing custody order until

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at least ninety (90) days after the end of such service for the military parent. Any court of this state otherwise possessing authority to do so may enter such temporary orders as may be required to ensure the needs of any child are met and which serve the best interests of that child.

(e) *Temporary modification of custody or visitation.*

(1) An existing order establishing the terms of custody or visitation that is in place at the time a military parent is ordered to perform service may be temporarily modified to provide for the military parent's continuing contact with the child and which serves the best interests of a child, and to make reasonable accommodation for the parties because of the military service.

(2) A temporary modification order issued pursuant to this section must provide that the deploying military parent shall be entitled to custody of the child or reasonable visitation, whichever is applicable pursuant to the existing order, during any period of leave granted to the deploying parent.

(3) Any court order modifying an existing custody or visitation order that is determined necessary due to the assignment of a military parent shall specify that the temporary absence of that parent is the basis for the order, and shall further state that it is entered by the court solely as a temporary order. Any such temporary custody or visitation order shall further require the non-deploying parent to provide the court and the military parent with no less than 30 days' advance written notice of any change of his or her address or any change of telephone number. Any such change of address shall be considered temporary only, and shall not serve to divest the court of its

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continuing jurisdiction or venue to subsequently make determinations as to the permanent custody arrangements of a child of the parties.

(4) Upon motion of a deploying parent, upon reasonable advance notice, and for good cause shown, the court shall hold an expedited hearing in any custody or visitation matter instituted under this section when the military duties of the deploying parent have a material effect on his or her ability, or anticipated ability, to appear in person at a regularly scheduled hearing.

(e) *Termination of a temporary modification of custody or visitation order.*

(1) A temporary modification of an existing custody or visitation order automatically ends no later than 30 days after the return of the deploying parent; and, the original terms of the permanent custody or visitation order that was in place at the time of deployment shall be reinstated automatically.

(2) The preceding subsection shall not limit the power of the court to conduct an expedited or emergency hearing regarding custody or visitation upon return of the deploying parent, and the court shall do so within ten days of the filing of a motion alleging an immediate danger of irreparable physical or emotional harm to the child.

(3) The non-deploying parent shall bear the burden of proof to show by a preponderance of the evidence that a reentry of the previously permanent custody or visitation order that was in effect before the deployment, remote or temporary duty assignment is no longer in the child's best interests. The court shall set any non-emergency motion by the non-deploying parent for hearing within 30 days of the filing of the motion and this shall take precedence on the court's docket.

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(f) *Removal of a child from the State of Georgia for purposes of the court's jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.* Any order permitting removal of the child from the State of Georgia, during or due to deployment, shall be denominated only as a temporary order; and any absence of the child from this State as the result of such an order shall be considered a "temporary absence" for the purposes of the application of the Uniform Child Custody Jurisdiction and Enforcement Act. (O.C.G.A. §§19-9-40 to 19-9-51; §§19-9-61 to 19-9-70; §§19-9-81 to 19-9-97; §§19-9-101 to 19-9-104). For the duration of the deployment, the State of Georgia shall retain Exclusive Continuing Jurisdiction under O.C.G.A. §19-9-62; and, the existence of a deployment or assignment may not be used as a basis to assert inconvenience of the forum under O.C.G.A. §19-9-67. This provision shall not prevent the proper exercise of a Temporary Emergency Jurisdiction under O.C.G.A. §19-9-64.

(g) *Appointment of an attorney or a guardian ad litem:* In any application brought for an order of custody, parenting time, or visitation in which the military parent invokes the protections of a stay of proceedings under the Servicemembers Civil Relief Act, 50 US Code Appendix 521 and 522, and the court declines to grant a stay or to extend a stay beyond the mandatory 90 days required by Federal law, and then proceeds in the absence of the military parent, the Court shall appoint a guardian ad litem to represent the minor child's interests and an attorney to represent the interests of the deployed military parent.

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(h) *Delegation of visitation rights or parenting time.* As a policy recognized by this state under O.C.G.A. §19-9-3(d), there is a continuing need for a child of a deployed or absent military parent to have frequent and close contact with that parent's other family members with whom the child has a substantial relationship.

(1) Upon motion of the military parent or family member, and for the duration of the deployment or absence of the military parent, the court may temporarily delegate his or her visitation rights or parenting time, or any portion thereof, to a family member who has a close and substantial relationship to the minor child or children. Any such delegation shall not exceed the parenting time which was granted to the deployed parent under the existing permanent order and shall not encroach upon the parenting time previously awarded to the non-deploying parent. Provided however, that a reasonable exception may be made to take into account atypical travel time for exchanging a child between the non-deploying parent and the military parent's other family members who are delegated the visitation privileges or parenting time.

(2) The court shall temporarily grant such delegation of visitation rights or parenting time unless it is found by a preponderance of the evidence that such delegation it is not in the child's best interest. The burden of proof shall be upon the party opposing the request for delegation to show evidence of irreparable physical or emotional harm to the child.

(3) Neither this code section nor a court order temporarily permitting such delegated visitation or parenting time shall creates any permanent or separate rights to visitation for any person other than a natural or adoptive parent of the child.

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(4) This code section shall not serve to limit the right of a grandparent seeking permanent visitation rights with the child under O.C.G.A. §19-7-3, or of a person of specified a relationship to the child seeking an award of custody under O.C.G.A. §19-7-1(b.1).

(i) *Standing to enforce rights delegated.* Once the court has temporarily delegated visitation rights or parenting time to a family member of the deployed parent, the court's order shall thus create within that person to whom such rights are delegated full legal standing to enforce by a motion for contempt or any other means the visitation rights or parenting time afforded to them under the temporary order. A person with such legal standing shall also be entitled to seek an award of attorney fees and court costs upon the same basis as the deployed parent.

(j) *Testimony and evidence.*

(1) The court shall recognize that deploying parents may perform military service in primitive and isolated locations where regular means of communications or of functioning courts do not exist.

(2) When the military duties of a deploying parent materially affect his or her ability to appear in person at a regularly scheduled court hearing, then upon motion of such parent and with reasonable advance notice, the court shall allow the deployed parent to present testimony and evidence by affidavit, video recorded interrogatories and answers, or other electronic means as to any matter relating to the facts concerning custody, visitation, or support that are at issue under this section. The

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phrase “electronic means” includes communication by telephone, video teleconference, or the Internet.

(3) Pursuant to O.C.G.A. §19-9-50, the court may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual conferencing, or other electronic means before a designated court, or at another location in that state. For purposes of this code section, this permissible electronic testimony shall also apply to military personnel residing or assigned outside the United States. A court of this state shall cooperate with the courts of any other states or with military officials if the deploying parent is outside the United States in designating an appropriate location for the deposition or testimony. Such electronic testimony shall also be permitted at the court’s discretion for witnesses within the state or outside the United States, who have a justifiable reason for not personally appearing at any hearing.

(4) For purposes of general affidavits, depositions by affidavit, or otherwise in taking sworn testimony, the courts of this state shall recognize the authority of those designated military personnel acting pursuant to 10 USC §1044a to have the same authority as a notary public of this state or of a U.S. Consular Officer.

(k) *Parenting time during leave and other accommodations to military parents.* Any order entered under this section shall at a minimum require that:

(1) The non-deploying parent shall make the child or children reasonably available to the deploying parent when that parent has leave;

(2) The non-deploying parent shall have an affirmative duty to promptly deliver to the child any written correspondence or packages sent by the deployed parent, and will not accumulate or retain any such items from the child;

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(3) During any deployment or other absences of the military parent, the non-deploying parent shall affirmatively act to facilitate reasonable opportunities for video teleconferencing, telephonic, and electronic mail contact between the deploying parent and the child or children and,

(4) The deploying parent shall provide timely information regarding his or her leave schedule to the non-deploying parent.

(l) *Expedited hearing if there is no existing custody or visitation order in place.* If there is no existing order establishing between parents the terms of custody or visitation, and it appears that deployment or other military assignment is imminent, upon motion by either parent the court shall expedite a temporary hearing to establish terms for temporary support, custody arrangements, and visitation rights to ensure the deploying parent has access to the child; to ensure disclosure of address, telephone and other contact information; to grant other rights and duties set forth herein; and, to provide other appropriate relief. Any initial pleading filed to establish, support, custody, or visitation for a child of a deploying parent shall be so identified at the time of filing by stating in the text of the pleading the specific facts related to his or her deployment or military assignment.

(m) *Duty to cooperate and disclose information.*

(1) Since military necessity may preclude rapid court adjudication before deployment, the parties of a child shall cooperate with each other in an effort to reach a mutually agreeable resolution of custody, visitation, and of child support. Each party shall provide contact, deployment, and military assignment information to the

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other parent in an effort to facilitate agreement on custody, visitation, and child support.

(2) A deploying parent must provide a copy of his or her deployment or assignment orders to the non-deploying parent promptly and without delay in advance of their departure. Notification must be made within 10 days of receipt of deployment, temporary duty, or Permanent Change of Assignment orders. If less than 10 days' notice is received by the military parent, then notice must be given immediately upon receipt of such military orders.

(3) If no child support order is in place, then for purposes of determining any temporary support obligations of a military parent, his or her gross monthly income shall be determined as required under O.C.G.A. §19-6-15(f)(1)(E). Domestic Relations Financial Affidavits required under Uniform Superior Court Rule 24.2, including attachments showing proof of income, shall be exchanged.

(n) *Service of process.* The Court shall recognize that a deploying military parent will have limited time to present their motion to the court; and, in the usual course of litigation there will be insufficient time to exhaust the customary means of service of process upon a non-deploying parent, especially if that non-deploying parent's whereabouts are unknown.

(1) Where time constraints reasonably permits and the whereabouts of the other party is known, service of process shall be made as required under O.C.G.A. §9-11-4.

(2) Where the whereabouts of the non-deploying parent is unknown; and, sufficient time does not exist to effect service by publication under O.C.G.A. §9-11-4(f)(1); and, upon good cause shown by the military parent, the court may permit any

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reasonable alternative service of summons, including service by commercial express delivery or U.S. Certified Mail, return receipt requested, to the non-deploying parent's last known mail or physical address based upon an affidavit of the deploying military parent. The court may further require that the deploying parent to proceed to obtain service by publication upon the non-deploying party, however, the court shall nevertheless proceed with a hearing upon proof that service has been attempted at the non-deploying parent's last known address either by personal service, commercial express delivery, or by U.S. Certified Mail, return receipt requested.

(3) Upon a good faith showing by the deploying or military parent that reasonable attempts have been made to obtain service on the non-deploying parent the court shall proceed to enter a temporary order, even if such must be done on an *ex parte* basis. Given that an order entered under this code section is a temporary only, the court may later modify its order as necessary once the non-deploying parent has been served and has requested a hearing or otherwise presented evidence for the court to reconsider its prior order.

(o) *Failure to exercise visitation rights.* In determining whether a military parent has failed to exercise his or her visitation rights or parenting time for either a subsequent custody claim or for child support proceedings, the court may not count any time or periods during which the military parent could not exercise his or her visitation due to the material effect of that parent's military duties on visitation time.

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(p) *Attorney fees and costs.* In making determinations pursuant to this code section, the court may award attorney's fees and costs under O.C.G.A. §§19-6-2; 19-6-15; and, 19-9-3(g) and upon the court's further consideration of the exacerbation of such fees caused by any of the following:

- (1) The failure of either party to reasonably accommodate the other in custody or visitation matters related to a military parent's service;
- (2) Any unreasonable delay caused by a party in resolving custody or visitation issues related to a military parent's service;
- (3) Failure of either party to timely provide address, phone, income, or leave information to the other party; and,
- (4) Any other factor as the court may consider appropriate and as may be required by law.

(q) This statute shall be effective immediately upon signature of the governor or as otherwise lawfully enacted; and, shall apply to any case then pending before a superior or juvenile court within this state or for all motions which are filed on or after such date.