



ENSURE STATES CONSIDER UNIQUENESS OF MILITARY SERVICE WHEN DETERMINING CHILD CUSTODY

SUBJECT:

The Department of Defense believes the welfare of the child is paramount. It also believes absence due to military service should never be the sole basis for a loss of custody or diminished visitation rights, even though the effects of such absences could be an appropriate consideration.

PRINCIPLES:

Best practice protections include the following substantive points:

1. No permanent orders altering existing custody arrangements should be entered while the custodial parent is unavailable due to military service.
2. Past, current or possible future absences 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 nonabsent parent should bear the burden of proof.
4. A service member with visitation rights should be allowed to petition the court to allow those visitation rights to be delegated to a third person during the service member's absence due to military service.
5. Additionally, states frequently include the following important procedural protections:
 - Allowing expedited hearings upon the request of a service member
 - Letting the court use electronic testimony when the service member is unavailable, if it is in the best interest of him or her

BEST PRACTICES:

The following are examples of comprehensive legislation addressing the substantive and procedural protections listed above:

- Washington: HB 1170, "Parenting Plan Modifications — Military Service," enacted in 2009
<http://www.militaryonesource.mil/12038/Project%20Documents/USA4%20Military%20Families/SSB1170%20%28Washington%20State%29%5B1%5D.pdf>
- Vermont: H 533, "An act relating to military parents' rights," enacted in March 2010
<http://www.militaryonesource.mil/12038/Project%20Documents/USA4%20Military%20Families/ACT069%5B1%5DISSUE%20%20Vermont.pdf>
- Alaska: HB 334, "Establishing child custody, modification and visitation standards for a military parent," enacted June 2010
http://www.legis.state.ak.us/basis/get_bill_text.asp?hsid=HB0334Z&session=26
- Louisiana: HB 1156, "To provide for the Military Parent and Child Custody Protection Act," enacted June 2010
<http://www.militaryonesource.mil/12038/Project%20Documents/USA4%20Military%20Families/Issue2-LA-HB.pdf>