

§ 93-5-34. Custody and visitation procedure upon parental temporary duty, deployment, or mobilization

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

(2) As used in this section:

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

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

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

(d) The term “family member” means a person related by blood or marriage and may include, for purposes of this statute, a step-parent, grandparent, aunt, uncle, adult sibling or other person related by blood or marriage.

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

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

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

(c) Any order entered under this section shall require that:

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

2) The non-deploying parent shall facilitate opportunities for telephonic, “web cam,” and electronic mail contact between the deploying parent and the child or children during deployment; and

3) The deploying parent shall provide timely information regarding such parent's leave schedule to the non-deploying parent.

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

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

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

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

(8) Any hearing pursuant to this section shall take precedence over all other causes not involving the public interest, to the end that these cases may be expedited.