



ASA DIX LEGAL BRIEF

A PREVENTIVE LAW SERVICE OF THE JOINT READINESS CENTER LEGAL SECTION
UNITED STATES ARMY SUPPORT ACTIVITY DIX
KEEPING YOU INFORMED ON YOUR PERSONAL LEGAL NEEDS

CHILD CUSTODY DURING MOBILIZATION AND DEPLOYMENT

Q: I am a single parent. Will I be able to determine who will take care of my children while I am mobilized or will the other parent have the right to care for them while I am mobilized? It depends. If you were awarded sole custody of the children by a court, then you have the legal right to decide who will take care of your children while you are mobilized. However, if you and the other parent share joint custody, then the other parent may have the right to take care of the children while you are mobilized if he or she chooses to do so.

Q: What is a Family Care Plan? Under Army Regulation 600-20, paragraph 5-5, certain Soldiers, such as single parents with joint or full physical custody of a child and dual military couples with a child, are required to have a Family Care Plan in which they appoint someone to be guardian of their children in their absence.

Q: I have sole custody and have appointed a family member to act as guardian of my children under my Family Care Plan. Could the noncustodial parent take the children away from the appointed guardian while I am deployed? If you have sole custody, the noncustodial parent cannot simply take the children away from your appointed guardian. However, the noncustodial parent could ask the court to modify the custody order by filing a petition for modification in the appropriate state court. The state court would then have to determine whether it would be in the best interest of the children to live with the other parent or with the guardian you appointed.

Q: What is the Best Interest Doctrine? The best interest doctrine is the test family courts use to determine the best custody arrangement for children. The test consists of factors the court weighs which include: wishes of the parents; wishes of the children; interaction of the child with significant people (parent, siblings, relatives); the child's adjustment to home, school, and community; the mental and physical health of all people involved; and the ability of the parent to give the child personal attention. The factors considered by the courts differ slightly from state to state.

Q: Are there any laws that protect Servicemembers from losing custody while they are mobilized or deployed? Yes. The Servicemembers Civil Relief Act (SCRA) provides that military members can delay child custody proceedings for 90 days if military service materially affects the military members' ability to defend their interests. Stays beyond the initial 90 days can be granted at the discretion of the judge or hearing official. Additional delays may not be granted due to the overriding needs of the child. If an additional stay is denied, the court or administrative body must appoint counsel to represent the military member's interests. The SCRA also provides that if a default judgment is entered against you in a custody proceeding, you may be able to open the judgment by showing how your military duty materially affected your ability to appear in court and that you have a meritorious defense to present to the court.

Q: Other than the SCRA, are there any state laws that protect me from being denied or losing custody due to my military service? Custody is governed by state law and, therefore, you must look at the law in your particular state to determine whether you have additional protections due to your military status. Many states are enacting new laws to protect military members from losing custody due to their military status or while they are deployed. Some states have passed legislation to protect Servicemembers in child custody situations by allowing only temporary (not permanent) custody orders during deployments. Some states require the automatic reinstatement of the original custody arrangement upon the return of the Servicemember from deployment. Some states do not allow the courts to use current or future deployments as a factor in determining custody. State laws vary greatly, so you should consult an attorney to determine the law in your particular state.