

HOUSE BILL 108

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Thomas A. Garcia

FOR THE MILITARY AND VETERANS' AFFAIRS COMMITTEE

AN ACT

RELATING TO DOMESTIC RELATIONS; ENACTING THE SERVICE MEMBER
CHILD CUSTODY ACT; ESTABLISHING PROCEDURES FOR MODIFYING
EXISTING CUSTODY, TIME-SHARING OR VISITATION ORDERS FOR
CHILDREN OF SERVICE MEMBERS; PROHIBITING ENTRY OF FINAL ORDERS
MODIFYING EXISTING CHILD CUSTODY, TIME-SHARING OR VISITATION
ORDERS WHILE A SERVICE MEMBER IS UNAVAILABLE PURSUANT TO
MILITARY ORDERS; PROHIBITING THE MODIFICATION OF EXISTING CHILD
CUSTODY, TIME-SHARING OR VISITATION ORDERS SOLELY BECAUSE A
SERVICE MEMBER IS ABSENT OR MIGHT BE ABSENT PURSUANT TO
MILITARY ORDERS; PROVIDING FOR A SERVICE MEMBER TO DELEGATE
VISITATION RIGHTS; PROVIDING FOR AN EXPEDITED HEARING WHEN A
SERVICE MEMBER WILL BE UNAVAILABLE PURSUANT TO MILITARY ORDERS;
PROVIDING FOR ELECTRONIC TESTIMONY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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1 SECTION 1. SHORT TITLE.--This act may be cited as the
2 "Service Member Child Custody Act".

3 SECTION 2. DEFINITIONS.--As used in the Service Member
4 Child Custody Act:

5 A. "child" means an individual who has not attained
6 eighteen years of age or is not otherwise legally emancipated;

7 B. "deploying parent" means a military parent who
8 has received written orders to deploy with the United States
9 army, navy, air force, marine corps, coast guard or national
10 guard or a reserve component thereof;

11 C. "deployment" means military service in
12 compliance with military orders received by a service member to
13 report for combat operations, contingency operations,
14 peacekeeping operations, temporary duty, a remote tour of duty
15 or other active service for which a service member is required
16 to report unaccompanied by any family member; and "deployment"
17 includes a period during which a service member remains subject
18 to deployment orders and remains deployed on account of
19 sickness, wounds, leave or other military cause;

20 D. "family member" means a person related by blood,
21 adoption or marriage and includes a spouse, child, sibling,
22 parent or grandparent or other person who may significantly
23 affect a child's best interest;

24 E. "military parent" means a parent who is a
25 service member;

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1 F. "non-deploying parent" means a parent not
2 subject to deployment;

3 G. "parent" includes a biological or adoptive
4 parent of a child or other person who provides care for a child
5 and may significantly affect the child's best interest;

6 H. "period of leave" means an authorized absence
7 from military duty; and

8 I. "service member" means a member of the United
9 States army, navy, air force, marine corps, coast guard or
10 national guard or a member of a reserve component thereof.

11 SECTION 3. FINAL ORDERS.--

12 A. A court shall not enter a final order modifying
13 an existing order concerning custody, time-sharing or
14 visitation to which a deploying parent is a party until ninety
15 days after that deploying parent's deployment ends unless all
16 parties stipulate to the entry of a final order.

17 B. Nothing in this section shall be interpreted to
18 limit the power of a court to conduct a hearing concerning
19 custody, time-sharing or visitation in which a military parent
20 is a party and to issue a temporary order concerning custody,
21 time-sharing or visitation in the best interest of the child
22 until a final order may be issued.

23 SECTION 4. MODIFICATION OF CUSTODY, TIME-SHARING OR
24 VISITATION--DEPLOYMENT NOT SOLE FACTOR.--Deployment or the
25 potential for future deployment is not in itself a substantial

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1 and material change in circumstance affecting the welfare of a
2 child. A court shall not use deployment or the potential for
3 future deployment as the sole factor to modify an existing
4 order concerning custody, time-sharing or visitation.

5 SECTION 5. TEMPORARY MODIFICATION--LEAVE AND OTHER
6 ACCOMMODATIONS.--

7 A. A court may issue a temporary order to modify an
8 existing order concerning custody, time-sharing or visitation
9 to which a deploying parent is a party to make reasonable
10 accommodation for the child because of the deploying parent's
11 deployment.

12 B. A temporary modification order issued pursuant
13 to this section shall provide that:

14 (1) the deploying parent shall have custody of
15 the child or reasonable time-sharing or visitation, whichever
16 is applicable, pursuant to the existing order concerning child
17 custody or visitation, during a period of leave granted to the
18 deploying parent;

19 (2) the non-deploying parent shall facilitate
20 telephonic, electronic mail or other communications and contact
21 between the deploying parent and the child during deployment;
22 and

23 (3) the deploying parent shall provide
24 information regarding the deploying parent's period of leave
25 schedule to the non-deploying parent at least ten days prior to

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1 the commencement of the period of leave or within reasonable
2 time if the deploying parent received less than ten days'
3 notice of a period of leave.

4 C. The non-deploying parent shall make a reasonable
5 effort to afford the deploying parent custody, time-sharing and
6 visitation pursuant to the existing order and parenting plan
7 concerning custody, time-sharing and visitation; provided,
8 however, that the non-deploying parent shall not be obligated
9 to incur a financial burden to facilitate custody, time-sharing
10 and visitation with the deploying parent. A reasonable effort
11 to afford custody, time-sharing and visitation includes
12 facilitation of the transportation of the child within the
13 exterior boundaries of New Mexico and other facilitation for
14 the child to visit with the deploying parent.

15 D. A court modifying an existing order concerning
16 custody, time-sharing or visitation due to deployment shall
17 specify that the deployment is the basis for the modification
18 and shall enter the order as a temporary order. The court
19 shall require the non-deploying parent to provide the court and
20 the deploying parent with thirty days advance written notice of
21 any change of address and any change of telephone number,
22 unless a domestic violence order requires that the address or
23 contact information of the non-deploying parent be kept
24 confidential pursuant to the Family Violence Protection Act.

25 E. Upon motion of a deploying parent notifying the

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1 court of imminent deployment, the court shall hold an expedited
2 hearing in the custody, time-sharing or visitation proceeding
3 to which that deploying parent is a party.

4 SECTION 6. TERMINATION OF TEMPORARY ORDER ISSUED DURING
5 DEPLOYMENT.--

6 A. Except as provided in Subsection B of this
7 section, a temporary order modifying an existing order
8 concerning custody, time-sharing or visitation during
9 deployment of a military parent shall terminate no later than
10 ten days after the end of the deployment of the military
11 parent. The original terms of the existing order and parenting
12 plan concerning custody, time-sharing or visitation prior to
13 deployment shall be reinstated. The deploying parent shall
14 notify the court and the non-deploying parent, in writing, of
15 the deploying parent's termination of deployment at least
16 fifteen days prior to the termination of deployment. If the
17 address of the non-deploying parent is confidential due to a
18 domestic violence order, the deploying parent shall only notify
19 the court in writing of the deploying parent's termination of
20 deployment.

21 B. The court shall not terminate the temporary
22 order if either the deploying parent or non-deploying parent
23 files an emergency or expedited motion alleging an immediate
24 danger or irreparable harm to the child if the terms of the
25 existing order concerning custody, time-sharing or visitation

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1 is reinstated. The court shall hold a hearing within ten days
2 of the filing of an emergency or expedited motion by either the
3 deploying parent or non-deploying parent alleging an immediate
4 danger of irreparable harm to the child if the terms of the
5 existing order and parenting plan concerning custody, time-
6 sharing and visitation are reinstated.

7 SECTION 7. DELEGATION OF VISITATION RIGHTS.--

8 A. Upon motion of a deploying parent, or upon
9 motion of a family member of the deploying parent with the
10 consent of the deploying parent, the court may issue a
11 temporary order to delegate all or a portion of the deploying
12 parent's visitation rights to a family member with a close and
13 substantial relationship to the child for the duration of the
14 deployment if in the best interest of the child. The person to
15 whom delegated visitation rights are granted shall have full
16 legal standing to enforce that temporary order.

17 B. The delegation of visitation rights or access to
18 the child shall not create an entitlement or standing to assert
19 separate rights to a liberty interest in the care and custody
20 of the child for a person other than a parent. A temporary
21 order delegating the visitation rights of a deploying parent
22 shall terminate by operation of law upon the end of that
23 deploying parent's deployment.

24 C. A delegation of visitation rights shall not
25 exceed the visitation time granted to the deploying parent

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1 under the existing order concerning child custody or
2 visitation, unless the court determines that additional time is
3 required to transport the child.

4 SECTION 8. TESTIMONY.--

5 A. In addition to other procedures available to a
6 party, a party to a custody, time-sharing or visitation
7 proceeding involving the child of a service member may offer
8 testimony of witnesses who are located in another state or
9 country, including testimony of the parties and the child, by
10 deposition or other means allowable in this state for testimony
11 taken in another state or country. The court on its own motion
12 may order that the testimony of a person be taken in another
13 state or country and may prescribe the manner in which and the
14 terms upon which the testimony is taken.

15 B. A court of this state may permit an individual
16 residing in another state or country to be deposed or to
17 testify by telephone, audiovisual means or other electronic
18 means before a designated court or at another location in that
19 state or country. A court of this state shall cooperate with
20 courts of other states or military facilities and courts in
21 other countries in designating an appropriate location for the
22 deposition or testimony.

23 SECTION 9. NO EXISTING ORDER.--

24 A. If a military parent has not been issued an
25 order concerning the terms of custody, time-sharing or

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1 visitation and it appears that deployment is imminent, upon the
2 filing of initial pleadings and a motion by either the
3 deploying parent or the non-deploying parent notifying the
4 court in the title of the pleading that deployment of a
5 military parent is imminent, the court shall expedite a hearing
6 to establish temporary custody, time-sharing or visitation to
7 ensure that the military parent has access to the child during
8 deployment, to ensure disclosure of information, to grant other
9 rights and duties pursuant to the Service Member Child Custody
10 Act and to provide other appropriate relief.

11 B. An initial pleading filed to establish custody,
12 time-sharing or visitation for a child of a deploying parent
13 shall be identified at the time of filing by stating in the
14 title of the pleading that the matter concerns a deploying
15 parent, and the pleading shall state the specific facts related
16 to the deployment.

17 **SECTION 10. DUTY TO COOPERATE AND DISCLOSE INFORMATION.--**

18 A deploying parent shall provide a copy of the deployment
19 orders to the non-deploying parent promptly and without delay
20 before deployment. Notification shall be made within ten days
21 of the receipt of the deployment orders or notification of a
22 period of leave. If less than ten days notification is
23 received by the deploying parent, then notification to the non-
24 deploying parent shall be given immediately upon receipt of the
25 deployment orders. If all or part of the orders are classified

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1 or restricted as to release, the deploying parent shall provide
2 all nonclassified or nonrestricted information to the
3 non-deploying parent.

4 SECTION 11. FAILURE TO EXERCISE TIME-SHARING OR
5 VISITATION RIGHTS.--In determining whether a parent has failed
6 to exercise time-sharing or visitation rights, the court shall
7 not count any time periods during which the military parent did
8 not exercise time-sharing or visitation due to the material
9 effect of that military parent's military duties on time-
10 sharing or visitation time.

11 SECTION 12. REMOVAL FROM THE STATE.--Once an order for
12 child custody involving the child of a military parent has been
13 entered in this state, any absence of a child from this state
14 during the military parent's deployment shall be designated a
15 "temporary absence" for the purposes of the application of the
16 Uniform Child-Custody Jurisdiction and Enforcement Act. For
17 the duration of the military parent's deployment, this state
18 shall retain exclusive continuing jurisdiction under that act
19 and the non-deploying parent shall not use the non-deploying
20 parent's relocation to another state as a basis to assert
21 inconvenience of the forum under that act.

22 SECTION 13. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2011.