Do States Make Special Custody and Visitation Provisions for Military Families When a Custodial Parent is Called to Active Duty?

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Currently, the following 33 states already have statutes that address the issue of special child custody and/or visitation problems when a military parent is called to active duty: Alabama, Arizona, Arkansas, Colorado, Delaware, Georgia, Indiana, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

Additionally, the following 10 states enacted such laws in 2010: Alaska, California, Florida, Hawaii, Idaho, Illinois, Iowa, Louisiana, Mississippi, and Vermont.

Massachusetts, New Jersey, New Mexico, and Rhode Island have proposed (but not yet enacted) such legislation in 2010. The District of Columbia proposed, but did not enact such legislation in 2009. Nebraska proposed such legislation in 2007, but the relevant language did not make it into the final version of the enacted law.

Connecticut has no statutes or case law on the issue. In 2007, the Supreme Court of Wyoming issued an opinion on the matter.

What is the reason for such laws? States already have large bodies of laws dealing with custody and visitation issues. But what to do about a custodial parent who goes off to serve in the military, leaving the child behind? This becomes a much bigger problem in time of war.

Under these specialized laws, the standard remains best interests of the child. But, the court must also take into account the special circumstances of the military parent. Most states choose to do this with carefully drafted statutes. A limited few prefer to decide these issues on a case-by-case basis.

One way these laws have begun to solve the disruption of family life is to address the military membership of one or both parents at the time of the initial custody order and plan ahead for the child if parental deployment should occur.

The kinds of issues that get addressed in this pre-planning phase are such things as: does the absent parent get to make up for the missed visitation time while he or she was on active duty? Does the custodial parent get to choose who the child lives with during this time or is it automatically the non-custodial biological parent? If the child lives with a non-biological guardian during this time does the guardian acquire any rights over the child when the military member returns? What if the military parent is killed in combat?

Another way that such laws take into account the special circumstances of military families is to make sure that no final modification of parental rights takes place in the deployed parent’s absence.

Finally, these laws require the use of expedited hearings and testimony by electronic means, to promote fair, efficient, and prompt judicial processes.

While no system is perfect, these customized custody and visitation statutes attempt to balance the best interests of the child against the realities of military life and attempt a workable solution for all parties involved.