

23-3217. Child custody and parenting time for parents deployed by the military; modification of orders; hearing. (a) As used in this section:

(1) "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.

(2) "Mobilization" means the call-up of a national guard or reserve service member to extended active-duty status. "Mobilization" does not include national guard or reserve annual training.

(3) "Service member" means any member serving in an active-duty status in the armed forces of the United States, the national guard or the armed forces reserves.

(4) "Temporary duty" means the transfer of a service member from one military base to a different location for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.

(5) "Unaccompanied tour" means a permanent change of station for a service member where dependent travel is not authorized.

(6) "Nondeploying parent" means the parent not subject to deployment, mobilization, temporary duty or unaccompanied tour orders from the military.

(b) The absence, relocation or failure to comply with a custody or parenting time order by a parent who has received deployment, mobilization, temporary duty or unaccompanied tour orders from the military, shall not, by itself, constitute a material change in circumstances warranting a permanent modification of a custody or parenting time order.

(c) Any court order limiting previously ordered custodial or parenting time rights of a parent due to the parent's deployment, mobilization, temporary duty or unaccompanied tour shall specify the deployment, mobilization, temporary duty or unaccompanied tour as the basis for the order and shall be entered by the court as a temporary order. Any such order shall further require the nondeploying parent to provide the court with 30 days advance written notice of any change of address and any change of telephone number.

(d) The court, on motion of the parent returning from deployment, mobilization, temporary duty or unaccompanied tour, seeking to amend or review the custody or parenting time order based upon such deployment, mobilization, temporary duty or unaccompanied tour, shall set a hearing on the matter that shall take precedence on the court's docket and shall be set within 30 days of the filing of the motion. Service on the nondeploying parent shall be at such nondeploying parent's last address provided to the court in writing. Such service, if otherwise sufficient, shall be deemed sufficient for the purposes of notice for this subsection. For purposes of this hearing, such nondeploying parent shall bear the burden of showing that reentry of the custody or parenting time order in effect prior to deployment, mobilization, temporary duty or unaccompanied tour is no longer in the best interests of the child.

(e) If the parties in a custody or parenting time matter concerning a parent who receives deployment, mobilization, temporary duty or unaccompanied tour orders from the military have entered into a parenting plan pursuant to K.S.A. 2016 Supp. 23-3213, and amendments thereto, that includes provisions for custody and parenting time upon military deployment, mobilization, temporary duty or unaccompanied tour, it shall be presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interests of the child.

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

(g) Upon motion of a parent who has received deployment, mobilization, temporary duty or unaccompanied tour orders from the military, the court shall, for good cause shown, hold an expedited hearing in custody and parenting time 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.

(h) Nothing in this section shall preclude a parent from petitioning for a modification of a custody or parenting time order based upon a material change in circumstances.

(i) Any order entered pursuant to this section shall provide that:

(1) The nondeploying parent shall reasonably accommodate the leave schedule of the parent subject to deployment, mobilization, temporary duty or unaccompanied tour orders;

(2) the nondeploying parent shall facilitate opportunities for telephonic and electronic mail contact between the parent subject to deployment, mobilization, temporary duty or unaccompanied tour orders and the child during the period of such deployment, mobilization, temporary duty or unaccompanied tour; and

(3) the parent subject to deployment, mobilization, temporary duty or unaccompanied tour shall provide timely information regarding such parent's leave schedule to the nondeploying parent. Willful violation of such order shall constitute contempt of court.

(j) Nothing in this section shall alter the duty of the court to determine custody or parenting time matters in accordance with the best interests of the child.

History: L. 2008, ch. 151, § 1; May 22.