

Custody When A Military Parent Deploys

Since I discussed service members in my recent post about the Servicemembers Civil Relief Act, it's a good time to review North Carolina's [Uniform Deployed Parents Custody and Visitation Act, GS 50A-350, et. seq.](#), effective since October 1, 2013. The Act is important for military families and for judges struggling to resolve custody issues when a military parent must deploy.

Required Communication

First the Act requires that any deploying parent notify the other parent of a pending deployment not less than seven days after finding out about it. **Deployment** is defined in as:

“The movement or mobilization of a service member to a location for more than 90 days, but less than 18 months, pursuant to an official order that (i) is designated as unaccompanied; (ii) does not authorize dependent travel; or (iii) otherwise does not permit the movement of family members to that location.”

[GS 50A-351\(9\).](#)

After notice is provided, each parent is required to provide the other with a plan for addressing **Custodial Responsibility** during deployment.

Agreements Between Parents

Part 2 of the Act authorizes parents to enter into agreements that are enforceable by courts and that temporarily supersede any existing custody order. The agreements terminate when deployment ends unless terminated earlier by agreement or by court order.

These agreements address **Custodial Responsibility** during deployment. The parents may grant **Caretaking Authority** to each other and to nonparents and specify what **Decision-Making Authority** accompanies that authority. Parents also may grant **Limited Contact** to nonparents. Those terms are defined as:

- **Custodial Responsibility** : “A comprehensive term that includes any and all powers and duties relative to caretaking authority and decision-making authority for a child. The term includes custody, physical custody, legal custody, parenting time, right to access, visitation, and the right to designate limited contact with the child.”
- **Caretaking authority**: “The right to live with and care for a child on a day-to-day basis, including physical custody, parenting time, right to access, and visitation.”
- **Decision-making responsibility**: “The power to make important decisions regarding a child, including decisions regarding the child’s education, religious training, health

care, extracurricular activities, and travel. The term does not include day-to-day decisions that necessarily accompany a grant of caretaking authority.”

- Limited Contact : “The opportunity for a nonparent to visit with a child for a limited period of time. The term includes authority to take the child to a place other than the residence of the child.”

[GS 50A-351](#).

Expedited Judicial Proceeding When Parents Cannot Agree

After receiving notice of deployment, either parent may file for a temporary order regarding custodial responsibility during deployment if the parties are unable to resolve issues on their own. The court must conduct an expedited hearing if the motion is filed before a parent deploys. If there is any previously entered court order or agreement addressing deployment, the court must enforce it unless the court determines enforcement is not in the child’s best interest. [GS 50A-373](#).

Otherwise, the court must allocate custody rights and responsibilities in accordance with the best interest of the child at the time of deployment. All orders must provide for “liberal communication” between the deployed parent and the child “through electronic means”, unless communication is not in the best interest of the child. [GS 50A-377](#).

Any order entered pursuant to the Act terminates upon the parent’s return from deployment.

Child Support

Agreements between the parents **cannot** alter any existing child support obligation.

If the court enters a custody order pursuant to the Act, it also can enter a temporary child support order if the court has jurisdiction pursuant to [UIFSA, GS Chapter 52C](#).

Rights for Nonparents

Either an agreement between the parents or a court order may grant rights to a nonparent. These rights terminate when deployment ends.

Parents can agree to nonparent contact and authority as they deem appropriate. [GS 50A-361\(a\)](#) specifies that a nonparent has standing to enforce an agreement while it is in effect, but:

“[t]he agreement derives from the parents’ custodial responsibility and does not create an independent, continuing right to caretaking authority, decision-making authority or limited contact in an individual to whom caretaking responsibility is given.”

In addition, [GS 50A-374](#) allows the court to grant:

- **caretaking authority** to a nonparent “who is an adult family member of the child or an adult with whom the child has a close and substantial relationship if it is in the best interest of the child;” and
- **decision-making authority** to a nonparent if the deploying parent is unable to exercise that authority.

Unless the other parent consents to more, any grant of **caretaking authority** by the court to a nonparent must be limited to:

“an amount of time not greater than (i) the time granted to the deploying parent in an existing permanent custody order, ...or (ii) in the absence of an existing permanent custody order, the amount of time that the deploying parent habitually has cared for the child before being notified of deployment...”.

[GS 50A-374](#).

Upon motion of the deploying parent, a court **must** grant **limited contact** to a nonparent who is either a family member or an individual with whom the child has a close and substantial relationship unless the court determines the contact is not in the child’s best interest. [GS 50A-375](#). The Act defines family member as “[a] sibling, aunt, uncle, cousin, stepparent, or grandparent of a child, and an individual recognized to be in a familial relationship with the child,” and defines close and substantial relationship as “[a] relationship in which a significant bond exists between a child and a nonparent.”

As with agreements, any grant of rights to a nonparent by a court is temporary and “does not create an independent, continuing right to caretaking authority, decision-making authority or limited contact to an individual to whom it is granted.” [GS 50A-376](#).

Disclaimer

These are just the highlights. Be sure to read the entire Act when dealing with a case where a deploying servicemember is involved.