

**OUTLINE
OF
GEORGIA MILITARY PARENT AND FAMILY EQUAL PROTECTION
ACT**

- I. **Statement of Purpose** (preamble to Bill): To protect the custody and visitation rights of our state's residents, whose military duties make them temporarily unavailable to provide care or supervision to their children.
- II. **Statement of Problem** (preamble to Bill): Our state is indebted to the sacrifices of our men and women who serve in the armed forces and who place themselves in harm's way to protect our liberty. However, the many who are also single parents of children either with custody or visitation rights now frequently suffer the loss of their custody status or parenting time when they are deployed under military orders. Additionally, their child's contacts with other family members (grandparents, aunts, uncles, step parents and half-siblings) are also sacrificed such that the children are denied continuing access to many of their family who love them. Our state's present laws provide too few options to prevent disenfranchisement of military families. The absence of a clear public policy guidance place military parents at an extreme prejudice in custody cases that are very similar to their being considered as if they were "unfit parents". The present status of Georgia law adversely impacts upon military parents, their children, and indirectly our national security by creating a "custody crisis" for our citizens and residents who serve in the armed forces.
- III. **Goal of the Bill:** It is to be the public policy of this state that "no parent brave enough to serve in our armed forces should then be penalized for his or her military service in any child custody decision." Our state's laws should allow for courts to be more responsive to the immediate needs of military families, and to only enter temporary orders when changing an existing custody arrangement when such is necessary to further the best interests of the child and when caused by the temporary absence of the military parent due to their national service.
- IV. **The Bill Would Provide for the Following:**
- Define key terms: "deploying parent"; "deployment"; "mobilization"; "non-deploying parent"; "permanent change of station"; "temporary duty"; "unaccompanied remote assignment".
 - Establishes the following as public policy of this state:
 - i. Military parents should not have their time spent on deployments and unaccompanied assignments used against them in custody decisions;

- ii. Military service should be a “neutral factor” in a court’s consideration of either fitness of a parent or in awarding physical custody between parents.
 - iii. The absence of a military parent from their child when due to military orders shall not, in and of itself, constitute a material change in circumstances allowing for a permanent change in a custody order.
 - iv. Where either or both parents have military commitments at the time the court enters a custody order or approves a parenting plan, courts of this state shall require the parties to address how they will manage the absence of either or both parents from the children when due to either of their military duties. (Such arrangements are already required of military parents as part of their Family Care Plan; however, such Plans do not have the legal precedence of Court Orders.)
- Temporary Modification of Custody or Visitation:
 - i. An existing custody order or parenting plan can only be temporarily modified during a military parent’s absence; and, any such temporary court orders will allow for continuing contact between the absent military parent, their other family members, and their children.
 - ii. Temporary orders shall specify that it is the absence of the military parent that is the basis of the order; requires a non-deploying parent to provide 30 days notice of any change of address or telephone numbers; and, provide that a relocation of a non-deploying parent does not divest the court of its jurisdiction to later modify or vacate its temporary orders.
 - iii. Requires expedited hearings when a military parent’s absence due to military orders will prevent him or her from later appearing at a court hearing to address any custody or visitation issue.
 - iv. Allows a court of this state to require mediation by the parties; provided that any such attempt at mediation does not prevent the court from later conducting a hearing where both parents can attend.
- Parenting Time During Leave and Other Accommodations to Military Parents:
 - i. Requires a non-deploying parent to make a child of the parties available to the military parent for quality time to nurture and maintain a parent-child bond during his or her periods of leave from their military units;
 - ii. Places an affirmative duty upon a non-deploying parent to promptly deliver correspondence intended for a child from the absent military parent;

- iii. Places an affirmative duty upon a non-deploying parent to facilitate opportunities for the military parent and child for video teleconferencing, telephone calls, accessing electronic mail, or other means of personal contact between the absent military parent and child;
 - iv. Requires the military parent to provide timely information regarding his or her leave schedule so that parenting time can be arranged between the military parent and children;
 - v. Allows for the enforcement of the above duties without the military parent being physically present at any hearing.
- Expedited Hearing if there is No Existing Custody or Visitation Order in Place: Allows for a motion and hearing to be held with 72 hours notice so that the court can enter a temporary order addressing among other things: support of a child during the military parent’s absence; custody and visitation arrangements; each parent’s access to a child; require disclosure of addresses, telephone numbers; and, for other appropriate relief.
- Removal of Child from the State of Georgia for Purposes of the Court’s Continuing and Exclusive Jurisdiction Under the UCCJEA: Provides that any temporary order or use of a power of attorney allowing for a child to be removed from this State shall be considered only as a “temporary absence” from the state for decisions under the Uniform Child Custody Jurisdiction and Enforcement Act; and, that such a temporary absence shall not act to divest the Georgia courts from having its exclusive and continuing jurisdiction to determine custody and visitation matters for the child.
- Temporary Delegation of Visitation Rights or Parenting Time: Restates existing state policy that children should have frequent and close contact with the parent’s other family members; and, reinforces that policy as it applies to absent military parents; defines the class of individuals as it relates to the child who can have such delegated parenting time, and prohibits any such delegation from encroaching upon the time reserved to the non-deploying parent; allows for the temporary delegation to be done using a statutory power of attorney form under O.C.G.A. §19-9-120 et.seq; and, does not create or limit the rights of certain specified relatives under other statutory provisions from seeking visitation or custody rights concerning the child; and, provides for the automatic termination of any such delegated rights to occur no later than 20 days after the return of the absent military parent.
- Standing to Enforce Delegated Rights: Allows for any person to whom a military parent has delegated his or her visitation or parenting time to have legal standing to then enforce such rights against the non-deploying parent; and, to seek attorney fees and expenses of litigation against the non-deployed parent.

- Termination of Temporary Modification of Custody or Visitation Order: Provides that any temporary order entered by the court modifying an existing custody order shall automatically expire 20 days after the military parent has returned; that the prior custody order and/or parenting plan be automatically reinstated; however, allows for the court to conduct an expedited hearing if it can be shown by clear and convincing evidence that reinstating the original (i.e., pre-deployment) custody order or parenting plan would cause an immediate danger of irreparable physical or emotional harm to the child.
- Date of Entry of Any Final Order: If the absence of a military parent has caused the court to enter a temporary order during that parent's absence, the court may not enter a final order that permanently modifies the prior custody or parenting time arrangement until at least 90 days after the military parent has returned from their deployment, remote or temporary duty assignment.
- Duty to Cooperate and Disclose Information: Requires the disclosure between the military parent and the non-deploying parent of essential information necessary for them to make parenting and support arrangements for the best interests of children; and, that such information shall include among other things financial information, contact information and addresses of one another, copies of military orders; and, any other similar information to ensure the children are adequately provided for during the military parent's absence, and to maintain the bond between the child and the deployed parent and his/her family members.
- Relocation Due to Military Service Should Not be the Sole Factor in Awarding or Modifying Permanent Custody or Visitation: Recognizes that military families are highly transient; that relocation is essential to the military parent's career progression; and, that other locations where military families are assigned have similar services for supporting children and families. This provision attempts to overcome a common prejudice faced by the parent in the armed forces that their reassignment and relocation are inherently destabilizing to a child and that similar support and community activities will not be available to the child in the new location. Finally it places the burden upon the non-military parent to show by clear and convincing evidence that a relocation by a military parent due to his or her orders is not in the best interest of the child. When an existing custody arrangement or parenting plan must be modified due to a permanent reassignment of the military parent, the court must address in any order, agreement, or a parenting plan the arrangements that affords both parents quality time with the children and shares the burden and costs of transporting the children to-and-from their parents.
- Stay of Proceedings and Appointment of an Attorney or Guardian ad Litem: There is both federal and state authority for a military parent to stay (freeze) certain legal proceedings of which they are a party. These authorities apply to cases involving custody of children. Where a stay has been requested and when courts must immediately act in the absence of a military parent, they will do so

only upon first appointing an attorney to represent the interests of the military parent and of a guardian ad litem to represent the interests of the children involved. Any such order issued in the absence of the military parent any which is done in the face of a request for a stay of the proceedings, will be made “temporary only”.

- Service of Process: Recognizes there is limited time for a military parent to serve the non-deploying parent in order to get a custody or visitation matter before the court; and, specifies additional means by which the non-deploying party can be served.
- Testimony and Evidence: Expands the existing means by which state courts can receive testimony and evidence from a deployed military parent. This includes available electronic means such as by satellites telephone and video/audio internet communications; scanned and emailed affidavits of parties and witnesses.
- Failure to Exercise Visitation Rights: When a military parent is unable to exercise his or her parenting time due to their military assignments, it may not be then used in an attempt to increase their child support, terminate their parental rights in connection with any adoption, or for making custody permanent determinations.
- Attorney Fees and Costs: In any action under this section, the court may consider the conduct of either party in causing unreasonable delays in any hearing, by evading service of process, failing to exchange essential information, or in attempting to terminate a military parents rights in connection with an adoption of their child.
- Effective Date of the Bill: Once it has been approved by the House and Senate, it becomes effective immediately upon signature by the Governor.
- Technical Changes to O.C.G.A. §19-9-120 et.seq.: This concerns the use of a Power of Attorney to delegate visitation or parenting time to another family member. It reduces the period of absence under this section due to military service from 24 months to 15 days; allows for family members other than grandparents of the child to be the military parent’s agent; and, affords the person with delegated rights legal standing to enforce those rights in court; and, terminates the power of attorney 20 days after the military parent is again present to exercise his or her visitation or custody rights with the child.
- Technical Changes to O.C.G.A. §19-9-1(b)(2): In those cases where either or both of the parents have military commitments, to require the courts to ensure that agreements or orders address what will occur if either of them are unavailable to provide care or supervision to a child when due to military orders.

- Technical Changes to O.C.G.A. §19-9-(3)(b): Allows a military parent to request a temporary modification of an existing custody order or parenting plan more frequently than once every two years when the basis for bringing such an action is their military assignments.