

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE DRH70423-LU-52A (2/22)

Short Title: Custody/Visitation/Military Orders. (Public)

Sponsors: Representatives Martin, Goodwin, Hall, and Moore (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

1
2 AN ACT TO ESTABLISH CUSTODY, VISITATION, EXPEDITED HEARING,
3 AND ELECTRONIC COMMUNICATIONS PROCEDURES WHEN A PARENT
4 RECEIVES MILITARY TEMPORARY DUTY, DEPLOYMENT, OR
5 MOBILIZATION ORDERS.

6 Whereas, currently there are six major military bases in North Carolina; and

7 Whereas, the military population of this State is the fourth largest in the
8 nation, with active-duty service members numbering over 100,000; and

9 Whereas, temporary duty, the deployment of an active-duty service member,
10 or the mobilization of a member of the National Guard or Reserves, sometimes with
11 little advance notice, can have a disruptive effect on custody or visitation arrangements
12 involving minor children of service members; and

13 Whereas, service members should be protected, as should their minor
14 children, from the loss of custodial arrangements and disruption of family contact due to
15 the service member's absence pursuant to military orders for temporary duty,
16 deployment, or mobilization; and

17 Whereas, other members of a service member's family, such as parents or
18 current spouses, can provide love, comfort, care, and continuity to the service member's
19 child through delegated visitation when a service member is absent due to military
20 orders; and

21 Whereas, the regular scheduling of hearings may be harmful to the interest of
22 service members who, due to military orders, may need to have an expedited hearing or
23 may need to use electronic means to give testimony when they cannot appear in person
24 in court; and

25 Whereas, the use of expedited hearings and testimony by electronic means, at
26 the request of the service member who is absent or about to depart, would aid and

1 promote fair, efficient, and prompt judicial processes for the resolution of family law
2 matters; Now, therefore,

3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 50-13.7(a) reads as rewritten:

5 "(a) ~~An~~ Except as otherwise provided in G.S. 50-13.7A, an order of a court of this
6 State for support of a minor child may be modified or vacated at any time, upon motion
7 in the cause and a showing of changed circumstances by either party or anyone
8 interested subject to the limitations of G.S. 50-13.10. Subject to the provisions of
9 G.S. 50A-201, 50A-202, and 50A-204, an order of a court of this State for custody of a
10 minor child may be modified or vacated at any time, upon motion in the cause and a
11 showing of changed circumstances by either party or anyone interested."

12 **SECTION 2.** Article 1 of Chapter 50 of the General Statutes is amended by
13 adding a new section to read:

14 "**§ 50-13.7A. Custody and visitation upon military temporary duty, deployment, or**
15 **mobilization.**

16 (a) Purpose. – It is the purpose of this section to provide a means by which to
17 facilitate a fair, efficient, and swift process to resolve matters regarding custody and
18 visitation when a parent receives temporary duty, deployment, or mobilization orders
19 from the military.

20 (b) Definitions. – As used in this section:

21 (1) The term 'deployment' means the temporary transfer of a service
22 member serving in an active-duty status to another location in support
23 of combat or some other military operation.

24 (2) The term 'mobilization' means the call-up of National Guard or
25 Reserve service member to extended active duty status. For purposes
26 of this definition, 'mobilization' does not include National Guard or
27 Reserve annual training.

28 (3) The term 'temporary duty' means the transfer of a service member
29 from one military base to a different location, usually another base, for
30 a limited period of time to accomplish training or to assist in the
31 performance of a noncombat mission.

32 (c) Custody. – When a parent who has custody, or has joint custody with primary
33 physical custody, receives temporary duty, deployment, or mobilization orders from the
34 military that involve moving a substantial distance from the parent's residence or
35 otherwise have a material effect on the parent's ability to exercise custody
36 responsibilities:

37 (1) There shall be a presumption that it is in the best interest of the child to
38 return custody of the child to the parent upon the parent's return,
39 without the need to show a change of circumstances; and

40 (2) The temporary duty, mobilization, or deployment and the temporary
41 disruption to the child's schedule shall not be a factor in a
42 determination of change of circumstances if a motion is filed to
43 transfer custody from the service member.

1 (d) Visitation. – If the parent with visitation rights receives military temporary
2 duty, deployment, or mobilization orders that involve moving a substantial distance
3 from the parent's residence or otherwise have a material effect on the parent's ability to
4 exercise visitation rights, the court may delegate the parent's visitation rights, or a
5 portion thereof, to a family member with a close and substantial relationship to the
6 minor child for the duration of the parent's absence, if delegating visitation rights is in
7 the child's best interest.

8 (e) Expedited Hearings. – Upon motion of a parent who has received military
9 temporary duty, deployment, or mobilization orders, the court shall, for good cause
10 shown, hold an expedited hearing in custody and visitation matters instituted under this
11 section when the military duties of the parent have a material effect on the parent's
12 ability, or anticipated ability, to appear in person at a regularly scheduled hearing.

13 (f) Electronic Communications. – Upon motion of a parent who has received
14 military temporary duty, deployment, or mobilization orders, the court shall, upon
15 reasonable advance notice and for good cause shown, allow the parent to present
16 testimony and evidence by electronic means in custody and visitation matters instituted
17 under this section when the military duties of the parent have a material effect on the
18 parent's ability to appear in person at a regularly scheduled hearing. The phrase
19 'electronic means' includes communication by telephone, video teleconference, or the
20 Internet."

21 **SECTION 3.** This act becomes effective October 1, 2007, and applies to
22 custody or visitation actions instituted on or after that date.