



DEPARTMENT OF DEFENSE POSITION

The Department of Defense opposes efforts to create Federal child custody legislation affecting Service members. At least 30 States provide some level of statutory child custody protection for Service members and their families. These States' laws understandably vary to some degree because they are tied to substantive and procedural differences found in their body of family law. Also, many of these variances reflect different societal dimensions found in different communities across the country. By encouraging each State to address the issues within the context of their already-existing body of State law, these cases will proceed quicker and more smoothly with less likelihood of lengthy appellate review. We strongly believe that Federal legislation in this area of the law, which has historically and almost exclusively been handled by the States, would be counterproductive.

The Department applauds the efforts by those States that have passed legislation to the Department and encourages the other States to consider similar legislation.

Meanwhile, the Department is itself taking, or will take, a number of steps to further protect our Service members:

First, the Secretary of Defense has personally written the governors of the States that have yet to pass legislation addressing the special considerations of child custody cases in the military to urge them to pass such legislation.

Second, DoD has included concerns over child custody matters on the list of the Department's 10 Key Quality of Life Issues, and these are now being presented to governors, State legislators and other State officials. On September 22, 2009, a representative from the Department's Office of Legal Policy and an expert in military child custody met with each of the Department's ten Regional State Liaisons and discussed military child custody issues. These liaisons are now reaching out to State officials whose legislatures have not addressed military custody concerns to encourage them to act.

Third, DoD will ask the military service Judge Advocates General and the Staff Judge Advocate to the Commandant to ensure they are doing all they can to work with the American Bar Association (ABA), and State Bar leaders to publicize, emphasize, and support the ABA's national pro bono project, as well as pro-bono initiatives in the States. These pro-bono efforts can provide our Service members access to free legal representation from some of the country's most accomplished child custody practitioners.

Fourth, DoD is engaged with the military services to update and standardize Family Care Plans across the services. These plans are developed to ensure that families are taken care of during absences due to drills, annual training, mobilization, and deployment. They include provision for long-term and short-term care of children. The Department recognizes that improvements to its Family Care Plan guidance can address many of the custody issues that could otherwise result in litigation after deployment. By clarifying those who require a Family Care Plan and emphasizing the importance of custody negotiations with the non-custodial parent early in the process—before deployment—the issues that most often give rise to litigation can largely be avoided. The Department is convinced that these efforts can resolve far more issues in favor of our Service members than can new Federal legislation.