



## Deployment and Child Custody in Georgia



When a Servicemember (SM) with primary physical custody of a child deploys, the SM may face hard questions. Can the SM leave the child in the care of a third party (i.e. someone other than the other parent)? If the SM does place child in the temporary custody of the other parent, will the SM lose permanent custody of the child?

While these questions cannot be answered definitively without the specific facts of the individual case, Federal law and Georgia state law offer guidance, accommodations, and protections that are tailored to the needs of deployed Servicemembers.

### **Q. What state has jurisdiction over the child custody case?**

**A.** For child custody issues, the SM first needs to determine which state's law applies and where the child custody dispute can be resolved. State law governs most family law issues and multiple states may come into play in child custody disputes involving SMs. Usually, the state where the child has lived continuously for at least six months prior to the case (or since birth for children less than six-months-old) will be the child's home state, and will have jurisdiction over the case.

Child custody jurisdiction can be complicated when, for example, a child has not lived in any state for six consecutive months. For help determining which state has jurisdiction over child custody matters, contact the Fort Benning Legal Assistance Office.

### **Q. Can the SM place their child in the care of a third party during deployment?**

**A.** It depends. Probably so if the noncustodial parent agrees to the arrangement. If the noncustodial parent wants to provide care for the child and is fit to do so, then probably not.

A SM's Family Care Plan may specify that a child will stay with a third party, such as a grandparent or a close family friend when the SM is deployed. A Family Care Plan is not a legal document and does not have any bearing on child custody issues. The SM must comply with a court order that specifies a child custody arrangement, and the Family Care Plan must be consistent with any such order. For more information on Family Care Plans see our ["Family Care Plan" Fact Sheet](#).

When the nondeployed parent agrees or does not dispute the arrangement, a SM can usually place their child in the care of a third party. For example, where the SM and the noncustodial parent have agreed in a parenting plan that a third party will care for a child in case of a SM's deployment and a court has approved the plan, the SM may follow the plan.

Georgia law requires that a parenting plan specify where the child will live during and after deployment whenever one of the parents is a SM—even when no deployment is anticipated (See [O.C.G.A. Section 19-9-1\(b\)\(2\)\(G\)](#)). Where there is an upcoming deployment and the parenting plan does not specify the custody arrangement during deployment, Georgia allows SMs to use an expedited process to create a temporary custody plan covering the period of deployment. (See [O.C.G.A. Section 19-9-3\(i\)\(14\)](#)).

However, if there is no parenting plan and the nondeployed parent wishes to care for the child during the SM's deployment, a SM will usually need to place the child in the care of the nondeployed parent. Fit parents have rights to participate in certain decisions concerning their children, including where the child will live when the parent with primary physical custody is unavailable to provide care.

For the SM to place the child in the care of a third party during deployment over the objection of the noncustodial parent, the SM will need to convince a court that the noncustodial is unfit or that some extraordinary circumstance exists that affects the best interests of the child. Making such a showing can be difficult. In general, a parent is unfit if they engage in behavior that harms or would harm the health and welfare of the child, which often involves physical abuse of the child or drug use.

**Q. Will the SM lose primary physical custody by placing the child in the temporary custody of the other parent during deployment?**

**A.** A SM will not lose primary physical custody solely because the SM has deployed or will deploy. However, a court may consider the effect of deployment along with other factors when determining the best interest of the child.

Federal law and Georgia law provide some accommodations for SMs, but they do not foreclose the possibility that the noncustodial parent will use the deployment to modify the custody arrangement. The Servicemembers Civil Relief Act (SCRA), [50 U.S.C. Sections 3931\(d\)](#) and [3932\(b\)](#), provide for a 90-day stay of civil proceedings for deployed SMs under certain circumstances.

These provisions provide only limited protection for a SM whose deployment is longer than 90 days. Courts may grant additional stays after 90 days, or they may refuse to do so. Refusal may require the court to appoint counsel to represent the SM. For more information on the 90-stay under the SCRA see our ["SCRA Fact Sheet."](#)

The SCRA also specifies that a state law applies (instead of its counterpart in the SCRA) if the state law is more protective of the rights of deployed SMs. (SCRA, [50](#)

[U.S.C. Section 3938\(d\)](#)). Georgia law provides some accommodations for deployed SMs that are either more protective than the relevant provision in the SCRA or are not present in the SCRA. These are primarily located in [O.C.G.A. Section 19-9-3\(i\)](#).

For example, Georgia law potentially makes it more difficult for the parent with temporary custody during the SM's deployment to gain permanent physical custody while the SM is deployed. Under O.C.G.A. Section 19-9-3(i)(1), a court may not issue a final order altering a parenting plan that existed before the deployment until 90 days after the deployment ends unless the SM agrees to the modification at an earlier time.

O.C.G.A. Section 19-9-3(i) creates a presumption that the predeployment parenting plan or custody order best serves the best interests of the child, and that the custody arrangement that existed prior to deployment will resume upon the SM's transition from deployment. To overcome the presumption, the noncustodial parent will have to show that the situation has changed such that the predeployment parenting plan no longer serves the best interests of the child.

**Q. What other protections do deployed SMs have under Georgia law?**

**A.** O.C.G.A. Section 19-9-3(i) provides additional rights, accommodations, and obligations for deployed SMs, even when the SM did not have primary physical custody before deployment. In general, the nondeployed parent must facilitate contact with the child and notify the SM of any change of residence during deployment. Additionally, the court may honor a deployed parent's request to present testimony and other evidence electronically, including by telephone, video teleconference, or email.

**Q. What if I have more questions?**

**A.** Please call 706-545-3281/3282 and schedule an appointment with a legal assistance attorney at the Office of the Staff Judge Advocate, Maneuver Center of Excellence, Fort Benning, GA.



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