

**CUSTODY AND PARENT-TIME AMENDMENTS
FOR SERVICE MEMBERS**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Tim M. Cosgrove

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides direction for custody and parent-time issues when a service member is away temporarily.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides for notice when a service member is deployed, mobilized, or ordered to temporary duty;
- ▶ gives a noncustodial parent "first choice" when a service member must be away;
- ▶ provides for the delegation of parent-time to a close family member in the noncustodial parent's absence; and
- ▶ prohibits a court from depriving a service member who is deployed, mobilized, or ordered to temporary duty of custody.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:



28 **30-3-40**, Utah Code Annotated 1953

29

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **30-3-40** is enacted to read:

32 **30-3-40. Custody and parent-time when one parent is a service member.**

33 (1) As used in this section:

34 (a) "Deployment" means the temporary transfer of a service member serving in an
 35 active duty status to another location in support of combat or some other military operation.

36 (b) "Mobilization" means the call up of a National Guard or Reserve service member to
 37 extended active duty status, but does not include National Guard or Reserve annual training.

38 (c) "Service member" means a person who is:

39 (i) a member of the Utah National Guard;

40 (ii) a member of a Reserve component based in the state; or

41 (iii) a member of the Armed Forces of the United States on active duty and stationed in
 42 this state.

43 (d) "Temporary duty" means the transfer of a service member from a military base to a
 44 different location, often another base, for a set period of time to accomplish training or to assist
 45 in the performance of a noncombat mission.

46 (2) In the absence of a parenting plan or other agreement covering such situations:

47 (a) A service member with custody of minor children in this state, and who is
 48 deployed, mobilized, or ordered to temporary duty at another location shall contact the
 49 noncustodial parent as soon as practicable after receiving orders. The service member shall
 50 inform the noncustodial parent of the approximate dates the service member will be away, if
 51 known.

52 (i) If willing and able, the noncustodial parent may elect to provide care for any minor
 53 children during the time the service member is away. The noncustodial parent shall notify the
 54 custodial parent of their willingness to provide care as soon as practicable, but not less than
 55 five days before the service member is required to leave.

55a **Ĥ→ (A) The parents shall arrange a time and place for the delivery of the children to the**
 55b **noncustodial parent. Except as provided in Subsection (B), a temporary exchange of physical**
 55c **custody under this Section shall be considered extended parent-time under Section 78B-12-216.**

55d **(B) Notwithstanding Section 78B-12-216, if a noncustodial parent elects to provide care**
 55e **for the minor children during the time the service member is away, child support payments to**
 55f **the custodial parent shall be suspended from the date the custodial parent leaves until the date**
 55g **the custodial parent resumes custodial care of the children. ←Ĥ**

56 (ii) If the noncustodial parent is unwilling or unable to provide care for any minor
 57 children during the time the service member is away, the service member may make specific
 58 arrangements for the housing and care of the minor children during the time the service

59 member will be away. ~~H~~→ [Arrangements] Notice of arrangements ←~~H~~ made by the service
59a member shall be provided to the
60 noncustodial parent and may not deprive the noncustodial parent of parent-time during the
61 same time period.

62 (b) A service member who is a noncustodial parent and is deployed, mobilized, or
63 ordered to temporary duty at another location may delegate his or her parent-time rights to a
64 family member with a close and substantial relationship to the minor child for the duration of
65 the service member's absence.

66 (3) A service member who is deployed, mobilized, or ordered to temporary duty may
67 not be deprived of custodial or parent-time rights while unavailable pursuant to military orders.
68 Any petition, motion, or action before a court attempting to deprive or alter custody or
69 parent-time rights shall be stayed in accordance with Section 39-7-105 and Section 521 of the
70 Federal Servicemembers Civil Relief Act, 50 U.S.C. 511, et seq.

Legislative Review Note
as of 2-17-09 8:59 AM

Office of Legislative Research and General Counsel

H.B. 401 - Custody and Parent-time Amendments for Service Members

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
