

1 **CUSTODY AND PARENT-TIME AMENDMENTS**

2 **FOR SERVICE MEMBERS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Tim M. Cosgrove**

6 Senate Sponsor: Gregory S. Bell

8 **LONG TITLE**

9 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ provides for notice when a service member is deployed, mobilized, or ordered to
16 temporary duty;
- 17 ▶ gives a noncustodial parent "first choice" when a service member must be away;
- 18 ▶ provides for the delegation of parent-time to a close family member in the
19 noncustodial parent's absence;
- 20 ▶ requires support to follow the child; and
- 21 ▶ prohibits a court from depriving a service member of custody who is deployed,
22 mobilized, or ordered to temporary duty.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 ENACTS:

29 **30-3-40**, Utah Code Annotated 1953

30

31 *Be it enacted by the Legislature of the state of Utah:*32 Section 1. Section **30-3-40** is enacted to read:33 **30-3-40. Custody and parent-time when one parent is a service member.**34 (1) As used in this section:35 (a) "Deployment" means the temporary transfer of a service member serving in an
36 active duty status to another location in support of combat or some other military operation.37 (b) "Mobilization" means the call up of a National Guard or Reserve service member
38 to extended active duty status, but does not include National Guard or Reserve annual training.39 (c) "Service member" means a person who is:40 (i) a member of the Utah National Guard;41 (ii) a member of a Reserve component based in the state; or42 (iii) a member of the Armed Forces of the United States on active duty and stationed
43 in this state.44 (d) "Temporary duty" means the transfer of a service member from a military base to a
45 different location, often another base, for a set period of time to accomplish training or to
46 assist in the performance of a noncombat mission.47 (2) In the absence of a parenting plan or other agreement between the parties covering
48 such situations:49 (a) A service member who is a custodial parent of minor children in this state, and
50 who is deployed, mobilized, or ordered to temporary duty at another location shall, if possible,
51 contact the noncustodial parent as soon as practicable after receiving orders. The service
52 member shall inform the noncustodial parent of the approximate dates the service member will
53 be away, if known.54 (i) Unless the noncustodial parent has supervised or limited parent-time, if willing and
55 able, the noncustodial parent may provide care for any minor children during the time the
56 service member is away. The noncustodial parent shall notify the custodial parent of their
57 willingness to provide care as soon as practicable, but not less than five days before the service

58 member is required to leave. If the noncustodial parent will provide care while the service
59 member is away, the parents shall arrange a time and place for the delivery of the children to
60 the noncustodial parent.

61 (ii) If the noncustodial parent is unwilling or unable to provide care for any minor
62 children during the time the service member is away, the service member may make specific
63 arrangements for the housing and care of the minor children during the time the service
64 member will be away. Notice of arrangements made by the service member shall be provided
65 to the noncustodial parent and may not deprive the noncustodial parent of parent-time during
66 the same time period.

67 (b) If a service member who is a noncustodial parent is deployed, mobilized, or
68 ordered to temporary duty at another location, his or her parent-time rights may be exercised
69 by a family member with a close and substantial relationship to the minor child for the
70 duration of the service member's absence. The service member shall provide the custodial
71 parent with written notice of arrangements made regarding the exercise of parent-time in the
72 service member's absence.

73 (3) A temporary exchange of physical custody under this section may not alter the
74 original custody order of the court.

75 (4) In addition to the arrangements made for the care of minor children under this
76 section, both parents shall comply with the provisions of Section 78B-12-108.

77 (5) A service member who is deployed, mobilized, or ordered to temporary duty may
78 not be deprived of custodial or parent-time rights while unavailable pursuant to military
79 orders. Any petition, motion, or action brought by a parent or guardian before a court
80 attempting to deprive or alter custody or parent-time rights shall be stayed in accordance with
81 Section 39-7-105 and Section 521 of the Federal Servicemembers Civil Relief Act, 50 U.S.C.
82 511, et seq.