

HOUSE BILL NO. HB0105

Temporary military duty-child custody and visitation.

Sponsored by: Representative(s) Throne, Davison, Gay,
Petersen and Stubson and Senator(s) Hastert,
Perkins and Von Flatern

A BILL

for

1 AN ACT relating to child custody and visitation; providing
2 definitions; limiting the modification of custody and
3 visitation for specified military personnel; specifying
4 factors considered in the modification of custody and
5 visitation; permitting the assignment of visitation rights
6 as specified; providing for expedited hearings; providing
7 for electronic evidence; and providing for an effective
8 date.

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10 *Be It Enacted by the Legislature of the State of Wyoming:*

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12 **Section 1.** W.S. 20-2-205 is created to read:

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14 **20-2-205. Temporary military duty; definitions;**
15 **modification of orders; visitation assignment; electronic**
16 **evidence.**

1

2 (a) When a service member who has custody or
3 visitation of a child receives temporary duty, deployment
4 or mobilization orders from the military which require the
5 service member to move a substantial distance from the
6 service member's residence or otherwise have a temporary
7 but material effect on the service member's ability to
8 exercise custody or visitation responsibilities:

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10 (i) Any order establishing the terms of custody
11 or visitation in place at the time the service member
12 receives the temporary duty, deployment or mobilization
13 orders may only be temporarily modified so as to provide
14 for the child's best interests;

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16 (ii) Any order modifying an existing custody or
17 visitation order that is determined necessary due to the
18 temporary duty, deployment or mobilization of a service
19 member shall specify that the service member's military
20 service is the basis for the order and shall further state
21 that it is entered by the court solely as a temporary
22 order;

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1 (iii) Any temporary custody or visitation order
2 entered as a result of temporary duty, deployment or
3 mobilization under this section shall automatically
4 terminate twenty (20) days after the service member
5 returns and the terms of the original custody or visitation
6 order that existed prior to the service member's absence
7 shall be reinstated without further order of the court.
8 Nothing in this section shall impair the power and
9 discretion of the court to conduct a hearing and enter an
10 order for emergency custody upon return of the service
11 member which hearing shall be held within ten (10) days of
12 the filing of a motion alleging an immediate danger of
13 irreparable harm to the child;

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15 (iv) For purposes of determining custody and
16 visitation after the return of a service member and upon
17 motion under W.S. 20-2-204, the temporary duty,
18 mobilization or deployment of the service member, and the
19 resulting temporary disruption to a child's schedule, shall
20 be neutral factors in determining a material change in
21 circumstances and shall not, alone, constitute a material
22 change in circumstances warranting a permanent modification
23 of custody or visitation rights.

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

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13 (c) Upon motion of a service member who has received
14 temporary duty, deployment or mobilization orders, the
15 court shall, for good cause shown, expedite any pending
16 hearing in custody and visitation matters when the military
17 duties of the service member have a material effect on the
18 service member's ability, or anticipated ability, to appear
19 in person at a regularly scheduled hearing.

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21 (d) Upon motion of a service member who has received
22 temporary duty, deployment or mobilization orders together
23 with reasonable advanced notice and proof that the service
24 member's military duties have a material effect on his

1 ability to appear in person, the court shall allow the
2 service member to present testimony and evidence by
3 electronic means in pending custody and visitation matters.
4 The phrase "electronic means" includes communication by
5 telephone, video teleconference or the Internet.

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7 (e) Nothing in this section shall alter the duty of
8 the court to consider the best interest of the child in
9 deciding custody or visitation matters.

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11 (f) As used in this section:

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13 (i) "Deployment" means federal service of the
14 United States under title 10, United States Code, in
15 compliance with military orders received by a service
16 member to report for combat operations, contingency
17 operations, peacekeeping operations, a temporary duty
18 assignment or other federal service for which the service
19 member is required to report and to be unaccompanied by
20 family members. "Deployment" also shall encompass any
21 federal service that includes a period during which a
22 service member is listed by the United States department of
23 defense as missing in action, a prisoner of war or remains
24 subject to his deployment orders on account of security

1 sequestration, sickness, wounds, leave or other lawful
2 cause. The term shall not apply to any service member who
3 is absent without leave or considered a deserter from the
4 armed forces;

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6 (ii) "Mobilization" means the recall to active
7 duty of a retired service member or the call-up of a
8 national guard or reserve component service member to
9 extended active duty status pursuant to title 10 United
10 States Code, sections 12301, 12302, 12303 and 12304.
11 "Mobilization" does not include national guard or reserve
12 annual or weekend training;

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14 (iii) "Return" means official release or
15 termination of temporary duty, deployment or mobilization
16 orders or the resumption of a service member's physical
17 presence within the state of Wyoming or state of permanent
18 residence if other than Wyoming. "Return" does not include
19 presence during temporary leave periods;

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21 (iv) "Service member" means a uniformed member
22 of the United States army, navy, air force, marine corps,
23 coast guard, United States public health service
24 commissioned corps, national oceanic and atmospheric

1 administration commissioned corp, national guard or any
2 reserve or auxiliary component thereof;

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4 (v) "Temporary duty" means the temporary
5 transfer of a service member from one (1) military
6 installation to a different location for a period usually
7 less than one hundred eighty (180) days in order to
8 accomplish training, assist in the performance of any
9 military mission or for medical treatment.

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11 **Section 2.** W.S. 20-2-201 by creating a new subsection
12 (g), 20-2-203(a), 20-2-204(c) are amended to read:

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14 **20-2-201. Disposition and maintenance of children in**
15 **decree or order; access to records.**

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17 (g) At anytime a court is considering the custody or
18 visitation rights of a service member, as defined by W.S.
19 20-2-205, the court shall comply with W.S. 20-2-205.

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21 **20-2-203. Jurisdiction for enforcement and**
22 **modification.**

1 (a) A court in this state which enters a custody
2 order under W.S. 20-2-201 has continuing subject matter
3 jurisdiction to enforce or modify the decree concerning the
4 care, custody and visitation of the children as the
5 circumstances of the service members and needs of the child
6 require, subject to the provisions of the Uniform Child
7 Custody Jurisdiction and Enforcement Act. A service
8 member's temporary duty, deployment or mobilization, as
9 defined in W.S. 20-2-205, shall not alter any court's
10 continuing jurisdiction under this section. A court which
11 has jurisdiction to enforce or modify an order under this
12 section may decline to exercise its jurisdiction if it
13 finds it is an inconvenient forum under the circumstances
14 of the case and that the court which entered the original
15 order is a more appropriate forum and has jurisdiction as
16 set forth in the Uniform Child Custody Jurisdiction and
17 Enforcement Act.

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19 **20-2-204. Enforcement and modification.**
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21 (c) A court having jurisdiction may modify an order
22 concerning the care, custody and visitation of the children
23 if there is a showing by either service member of a
24 material change in circumstances since the entry of the

1 order in question and that the modification would be in the
2 best interests of the children pursuant to W.S.
3 20-2-201(a). In any proceeding in which a service member
4 seeks to modify an order concerning child custody or
5 visitation, proof of repeated, unreasonable failure by the
6 custodial service member to allow visitation to the other
7 service member in violation of an order may be considered
8 as evidence of a material change of circumstances. Any
9 modification under this subsection shall be subject to the
10 limitations and requirements of W.S. 20-2-205.

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12 **Section 3.** This act is effective July 1, 2011.

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14 (END)