

CHAPTER 7

AN ACT concerning child custody and parenting time arrangements related to certain military service absences, supplementing chapter 2 of Title 9 of the Revised Statutes and amending P.L.2004, c.147.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.9:2-12.1 Definitions relative to child custody, parenting time arrangements related to certain military service absences.

1. a. As used in this section:

“Deployment” means: (1) the assignment of a service member by military order for military combat, or other military operation, mission, or service requiring a prolonged absence of 30 or more days, making the service member unable during that absence to exercise parenting time with a child for whom the service member is a parent or caretaker; or (2) the participation of a service member in full-time training duty, annual training duty, National Guard training, reserve training, or attendance at a military service school designated by law or by the Secretary of the applicable military branch concerned, requiring a prolonged absence of 30 or more days, making the service member unable during that absence to exercise parenting time with a child for whom the service member is a parent or caretaker.

“Military” means the armed forces of the United States, including the Army, Navy, Air Force, Marine Corps, and Coast Guard, the National Guard and any other reserve component of the armed forces, and the merchant marine when organized under the federal law as a public military force.

“Service member” means a member of the military, as defined herein, who is not retired.

“Service-related treatment” means treatment provided to a service member or veteran service member for a service-related injury, illness, or other health condition requiring a prolonged absence of 30 or more days, making the service member unable during that absence to exercise parenting time with a child for whom the service member is the parent or caretaker.

b. (1) The court, whenever making a determination concerning child custody or parenting time, shall not consider the absence or potential absence of a military service member by reason of deployment or service-related treatment as a factor in determining the best interest of a child for whom the service member is a parent or caretaker.

(2) The court shall, to the extent possible, expedite a determination on an application concerning a child custody or parenting time arrangement by a service member or the other parent or caretaker for a child in any case in which there is no existing child custody or parenting time order and the service member has received official written notice of deployment or service-related treatment from the military.

c. (1) Whenever a service member is a party to a child custody or parenting time arrangement and has received an official written notice of deployment or service-related treatment, the service member shall:

(a) notify the other parent or caretaker involved in the child custody or parenting time arrangement of the service member’s deployment or treatment location and scheduled dates thereat, no later than the day immediately preceding the service member’s departure, or the 10th day after receipt of the official written notice for the deployment or treatment, whichever date occurs first, unless the service member’s notice to the other parent or caretaker is prohibited by the military; and

(b) provide timely information, if not prohibited by the military, regarding the service member's scheduled leave or other availability during the service member's period of deployment or service-related treatment.

(2) The other parent or caretaker involved in the child custody or parenting time arrangement with the service member shall:

(a) make the child reasonably available to the service member while the service member is on leave or is otherwise available in accordance with the information provided to the other parent or caretaker pursuant to subparagraph (b) of paragraph (1) of this subsection; and

(b) facilitate opportunities for communication, including telephonic and electronic mail contact, to the extent feasible, between the service member and the child during the period of the service member's deployment or service-related treatment.

d. (1) During the period of the service member's deployment or service-related treatment, the court shall not enter an order modifying any judgment or order concerning child custody or parenting time, or issue a new order that changes an existing child custody arrangement in effect on the day immediately preceding the service member's departure for the deployment or treatment without the consent of all parties, except when the court finds it to be in the best interests of the child. The court may appoint a guardian ad litem, an attorney, or both to represent the child's interests with regard to any pending court determination concerning child custody or parenting time.

(2) Whenever the court finds it to be in the best interest of the child to enter an order modifying any judgment or order concerning child custody or parenting time, or to issue a new order that changes the existing child custody arrangement during the period of the service member's deployment or service-related treatment, the court may order parenting time for a family member of the service member who has a close and substantial relationship with the child. This parenting time shall not create a legal entitlement or standing to assert any other right to parenting time with the child.

e. During the period of the service member's deployment or service-related treatment and for 90 days following the day the deployment or treatment ended, New Jersey shall retain exclusive, continuing jurisdiction, in accordance with the provisions of the "Uniform Child Custody Jurisdiction and Enforcement Act," P.L.2004, c.147 (C.2A:34-53 et seq.), over any determination concerning child custody or parenting time.

f. Upon the service member's return from deployment or service-related treatment, the child custody or parenting time order in effect on the day immediately preceding the service member's departure for that deployment or treatment shall be resumed, and shall not be subject to modification for 90 days following the day the deployment or treatment ended; however, this provision shall not preclude any application to preserve the health, safety, and welfare of the child.

g. Any application pursuant to this section by a service member parent or caretaker during the period of deployment or service-related treatment shall not, without the express consent of the service member, be considered a waiver of any right or protection provided under the "Servicemembers Civil Relief Act," 50 U.S.C. App. s.501 et seq., or the "New Jersey Soldiers' and Sailors' Civil Relief Act of 1979," P.L.1979, c.317 (C.38:23C-1 et seq.).

h. Nothing in this section shall prevent a service member parent or caretaker and the other parent or caretaker from agreeing to a care arrangement for a child during the period of deployment or service-related treatment.

2. Section 13 of P.L.2004, c.147 (C.2A:34-65) is amended to read as follows:

C.2A:34-65 Initial child custody jurisdiction.

13. Initial Child Custody Jurisdiction.

a. Except as otherwise provided in section 16 of this act, or section 1 of P.L.2013, c.7 (C.9:2-12.1) concerning a service member's absence due to a deployment or service-related treatment as set forth in that section, a court of this State has jurisdiction to make an initial child custody determination only if:

(1) this State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State;

(2) a court of another state does not have jurisdiction under paragraph (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under section 19 or 20 of this act and:

(a) the child and the child's parents, or the child and at least one parent or a person acting as a parent have a significant connection with this State other than mere physical presence; and

(b) substantial evidence is available in this State concerning the child's care, protection, training and personal relationships;

(3) all courts having jurisdiction under paragraph (1) or (2) of this subsection have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under section 19 or 20 of this act; or

(4) no state would have jurisdiction under paragraph (1), (2) or (3) of this subsection.

b. Subsection a. of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this State.

c. Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child custody determination.

d. A court of this State may assume temporary emergency jurisdiction in accordance with section 16 of this act.

3. Section 14 of P.L.2004, c.147 (C.2A:34-66) is amended to read as follows:

C.2A:34-66 Exclusive, continuing jurisdiction.

14. Exclusive, Continuing Jurisdiction.

a. Except as otherwise provided in section 16 of this act, or section 1 of P.L.2013, c.7 (C.9:2-12.1) concerning a service member's absence due to a deployment or service-related treatment as set forth in that section, a court of this State that has made a child custody determination consistent with section 13 or 15 of this act has exclusive, continuing jurisdiction over the determination until:

(1) a court of this State determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or

(2) a court of this State or a court of another state determines that neither the child, nor a parent, nor any person acting as a parent presently resides in this State.

b. A court of this State which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 13 of this act.

4. This act shall take effect on the 60th day following the date of enactment, and shall apply to any action filed on or after the effective date.

Approved January 25, 2013.