



Child Custody Protections under the Servicemembers Civil Relief Act (SCRA)*

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If you have any questions about the information below, please contact the Creech Legal Office for assistance.

The Servicemembers Civil Relief Act of 2003 ("SCRA"), 50 U.S.C. § 3938, provides important benefits and protections to military members who are on active duty orders.

Typically, judgements concerning child custody and visitation are mainly within the domain of state law and state family courts. However, SCRA establishes specific minimum protections that all states must comply with.

Initially, SCRA requires that any temporary custody order based on deployment be limited in duration to that justified by the deployment. Second, a judge must not use deployment as the sole factor in making permanent custody determinations. Third, SCRA provides that if state law gives greater protection to service members in custody cases, then the state law shall prevail. Indeed, many states have adopted statutes explicitly addressing child custody in military cases, more specifically, custody determinations when there is a deployment.

As explained in more detail, 50 U.S.C. § 3938 specifically address the following:

1. Duration of Temporary Custody Order

If a court renders a temporary order for custodial responsibility for a child based solely on a deployment or anticipated deployment of a parent who is a servicemember, the court must require that the temporary order expire no later than the period justified by the deployment of the servicemember.

2. Limitation on Consideration of Member's Deployment in Determination of Child's Best Interest

If a motion or a petition is filed seeking a permanent order to modify the custody of the child of a servicemember, the court must not consider the absence of the servicemember by reason of deployment, or the possibility of deployment, as the *sole factor* in determining the best interest of the child.

3. No Federal jurisdiction or right of action or removal

SCRA does not create a federal right of action or otherwise give rise to Federal jurisdiction or create a right of removal to federal courts. In other words, state courts still maintain jurisdiction over child custody cases.

4. Preemption

In states where the child custody temporary order law provides a higher standard of protection to deploying servicemembers than provided under SCRA, the court must apply the higher state standard.

5. Stay of Proceeding

The SCRA allows for a "stay" or delay of court proceedings, including custody matters, if the servicemember's duties materially affect their ability to appear in court.

6. Deployment Defined

Deployment is defined as "the movement or mobilization of a servicemember to a location for a period of longer than 60 days and not longer than 540 days pursuant to temporary or permanent official orders: (1) that are designated as unaccompanied; (2) for which dependent travel is not authorized; or (3) that otherwise do not permit the movement of family members to that location.

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