

Notice to Servicemembers with Dependents of Child Custody Protections under SCRA

The material in this handout represents general legal principles. The law is continually changing; although the information in the handout was current as of the date it was drafted, some provisions in this pamphlet may have changed. It is always best to consult an attorney about your legal rights and responsibilities regarding your case.



on a deployment or anticipated deployment of a parent who is a servicemember, the court shall require that the temporary order shall expire not later than the period justified by the deployment of the servicemember.

(b) Limitation on consideration of member's deployment in determination of child's best

Annual and pre-deployment notice of servicemembers' protections guaranteed by the SCRA. 50 U.S. Code § 3938a

The Secretary of the Department of the Air Force shall ensure each servicemember with dependents receives annually, and prior to each deployment, notice of the child custody protections afforded to servicemembers under the SCRA.

Child Custody Protection.

50 U.S. Code § 3938

This law focuses on child custody issues and addresses:

(a) Duration of temporary custody order based on certain deployments

If a court renders a temporary order for custodial responsibility for a child based solely

Interest

If a motion or a petition is filed seeking a permanent order to modify the custody of the child of a servicemember, no court may 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.

(c) No Federal jurisdiction or right of action or removal

Nothing in this section shall create a Federal right of action or otherwise give rise to Federal jurisdiction or create a right of removal.

(d) Preemption

In any case where State law applicable to a child custody proceeding involving a temporary order as contemplated in this section provides a higher standard of protection to the rights of the parent who is a deploying servicemember than the rights provided under this section with respect to such temporary order, the appropriate court shall apply the higher State standard.

(e) **Deployment defined**

In this section, the term “deployment” means 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.

Find the full text at:

<https://www.law.cornell.edu/uscode/text/50/3938>

Stay of civil action or proceeding. *50 U.S. Code § 3932*

If a servicemember receives notice of a civil action or proceeding prior to final judgment, the servicemember may request a stay of the action or proceeding. If the request meets the conditions for stay, the judge must stay the action for a period of not less than 90 days. Requirements to request a stay of proceedings:

- 1) a letter or other communication stating why the servicemember cannot appear and provide a date when the servicemember will be available to appear; and
- 2) a letter or other communication from the servicemember’s commanding officer (not a supervisor or First Sergeant) stating the servicemember’s current military duty prevents appearance and military leave is not authorized at the time of the letter.

Find the full text at:

<https://www.law.cornell.edu/uscode/text/50/3932>

For further guidance, interpretation, or assistance, please contact your nearest legal office.

To find your nearest legal office, go to <https://legalassistance.law.af.mil>

click “*Legal Services Locator*”

The website works best using Chrome and searching by State.

Other helpful websites:

Department of Justice:

<https://www.justice.gov/crt/servicemembers-civil-relief-act-summary>

<https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-scr>

Military OneSource:

<https://www.militaryonesource.mil/family-relationships/relationships/relationship-challenges-and-divorce/servicemembers-civil-relief-act/>

American Bar Association (ABA):

https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/information_center/servicemembers_civil_relief_act/overview