To: The Legislative Study Committee on Child Placement and Support
Representative Robert Brooks
Representative Amanda Stuck

Dear Legislative Committee Members-

My name is Kimberly Graff. I am the President and Founder of Protecting Military Families in Wisconsin. We are a new organization with one mission; to ensure that the laws of Wisconsin provide protections for the families of the men and women who serve our nation. I am also a Marine Veteran, and the wife of a Marine Gunnery Sergeant. I am writing to show support for the implementation of the Deployed Parents Custody and Visitation Act in the State of Wisconsin.

The divorce rates for military families are higher than the average American family. With deployments, trainings, late nights, working weekends, and frequent moves, members of the military face unique challenges. The laws that have been designed around divorced families in Wisconsin often times do not adequately consider the challenges faced by the military family.

One of these challenges is custody and placement during deployment. The average soldier is deployed for up to 12 months at a time. The Marines deploy for around 9 months at a time. Currently, in Wisconsin, divorced parents have to give up their placement to the non-military parent who is staying behind, as long as that parent is fit and able. This is because of the Lubinski vs. Lubinski case (No. 2007AP1701) that set the precedent that placement was unique to the parent, and military members are not unique in being able to transfer visitation or physical placement to a third party.

This precedent is contrary to what the judge stated to be in the best interest of the child, as well as the findings of the majority of states in the country. The judge stated he made

the decision because he could not override what the parent thought to be in the best interest of the child, even though in placing the child with the mother alone, he overrode what the father had decided was in the child's best interest.

This leaves a deployed parent with no direct access to their children. In a high conflict divorce, the non-deployed parent may not allow regular contact with deployed parent, or their family. Even if regular contact is ordered, a deployed parent is not in the position to file for contempt and modification while out of the country. This leaves children of second marriages unable to see or talk to their siblings. This leaves grandparents, aunts, uncles, cousins, and other relatives without any contact with the children of the deployed parent.

This precedent assists alienating parents to continue to alienate, to continue to keep the kids from a military member, and this sets the children up for a contentious and damaging situation. This also opens the door for parents to modify placement permanently based on the "new" visitation schedule during deployment.

The Deployed Parents Custody and Visitation Act confronts these issues. It allows the deploying parent to assign a third party, a family member or current spouse, to continue placement on their behalf while they are gone. This Act allows continued contact with the deployed family member's family, other children, as well as continued contact with the military member themselves.

This Act takes into consideration cases of domestic abuse. It does not allow a parent to transfer custody and placement to a party with a criminal history that may be detrimental to the children. This Act does not allow the deploying parent to increase their placement and custody, but simply to maintain. It also ensures that as soon as the deployed parent returns, his or her rights are fully restored, with no chance for revocation of placement and custody based on the military member's absence.

Thirteen other states have passed the Deployed Parent Custody and Visitation Act. Most states that have not passed this Act have statutes already in place that offer similar rights to service members. It has the support of the Wisconsin Veterans of Foreign Wars, as well as the American Legion. It has gained support of state Senators and Assemblymen on both sides of party lines.

I have provided information about the Act, as well as a glimpse at another issue military member's face regarding child support. I would greatly appreciate if you took the time to review these documents and consider these protections for Wisconsin's military families.

We are humbled by the overwhelming support we have received thus far, and hope that it continues on such a positive and growing path. Many families in the military feel left out of the family court system, that their service is held against them as reasons to take their children, and their rights as parents. We sacrifice so much already, service members shouldn't have to sacrifice their children too.

Thank you so much for the opportunity to address you, and if you have any questions, please feel free to contact me.

Semper Fidelis,

Kimberly Graff

President/Founder
Protecting Military Families in Wisconsin
155 Buten St

Milton Wisconsin 53563
(608) 512-7905
kimiggraff@gmail.com

Bibliography

Lubinski v. Lubinski (Wisconsin Court of Appeals September 25, 2008).

Military Families of Wisconsin

Protecting Military Families of Wisconsin

Included in this packet you will find:

- A court order issued by a Dane County Court Commissioner that sums up one major problem that active duty military families face in Wisconsin; custody and visitation during deployment.
- The Deployed Parents Custody and Visitation Act Summary, as well as pages that elaborate how this act will solve the issue of custody and visitation during a Wisconsin service member's deployment.
- A summary of the issues active duty military members face when using military compensation and allowances in regards to child support.
- The solution that states with larger active military populations, such as Georgia, have come up with to eliminate this problem, and make sure the system supports both the children of divorce and the service members ability to serve our country.

Please consider these for the 2019 legislative session. Wisconsin has a duty to protect the families that sacrifice so much to protect us.

Respectfully,

Kimberly Graff

President - Founder
Protecting Military Families in Wisconsin
www.wisconsinmilitaryfamilies.com
kimiggraff@gmail.com
(608) 512 7905

ORDER FILED BY COMMISSIONER HANSON OF DANE COUNTY
Case # 13 FA 267

Mr. Graff is an active duty Marine who is serving in Wisconsin and lives in Milton. He has two children with his ex wife. They were divorced in 2013. They currently have 60/40 placement. He is remarried and has one child with his current wife. His ex refused his attempts to formulate a stipulation to settle placement during deployments and long trainings. Mr. Graff filed a motion, alongside his annual child support modification, to come up with such a stipulation. This was the court's response.

That leaves Mr. Graff's motion regarding military deployments. Mr. Graff has no scheduled deployments at this time, but will likely serve another 13 years and recognizes the very real possibility that one or more deployments could occur. **Mr. Graff seeks an order requiring the parties to honor the placement schedule during any deployment, so that his current spouse would continue to exercise his periods of placement.** He rightly raises the value in having his children maintain regular contact with his current wife, and more importantly, their interest in maintaining placement time with their younger sibling. Ms. Graff does not agree to such an order, but vows that she will cooperate in making sure that the children spend time with their younger sibling and will attempt to provide for meaningful contact with the current Mrs. Graff.

There is no doubt that Mr. Graff's concerns are genuine and legitimate. As a society, the least we can do for a serviceperson is to provide that their families will be safe and will be able to live as normal of a life as possible during a period of deployment. In recognition of this, the law provides some protections for servicepersons, including stays of civil proceedings and a right to return to a former placement schedule upon the completion of the deployment. However, there is also a family law principle that courts should not make placement orders that are contingent on a remote set of events. The concept is that, in making such an order now, it cannot always be determined whether the order will be in the best interests of the children at the time the contingency kicks in, as we don't now know all of the facts. That's one impediment to Mr. Graff's motion.

The second issue is that, under binding case law, **the Court doesn't have the authority to grant the request, even if Mr. Graff is actually on a deployment at the time of the order.** In Lubinski v. Lubinski, 314 Wis.2d 395 (Ct. App. 2008), Mr. Lubinski was deployed and sought an injunction requiring Ms. Lubinski (the former wife) to continue to honor the placement schedule called for in their divorce decree, which would have resulted in the child spending Mr. Lubinski's periods of placement with his new wife. For good measure, Mrs. Lubinski (the current wife) filed a petition for stepparent visitation, seeking placement rights commensurate with those enjoyed by Mr. Lubinski prior to the deployment. The trial court granted these motions. The Court of Appeals reversed the trial court's decision, citing a prior Supreme Court holding that placement rights are personal to the parent and not delegable and that the award of stepparent visitation cannot be used to usurp the placement rights of a fit parent.
The Lubinski decision seems most concerned with the effort to make a wholesale transfer of the parent's rights to the stepparent and doesn't necessarily say that there could be no court orders in a deployment situation. In other words, the decision possibly leaves open the door for the court to make lesser orders designed to preserve the best interests of children in the event of a deployment. **Further, the Court is aware that the Legislature has considered some proposals to amend the statutes to provide for a procedure like that proposed by Mr. Graff.** Maybe such a procedure will be adopted before there is a need to address the issue in this case.

It is obvious that providing for continued time and contact with the children's sibling and stepmother are in their best interests. If a deployment occurs and the parties cannot come to terms on a way to make that happen, it is highly likely that the Court would get involved in some fashion. From Mr. Graff's perspective, that probably feels like the worst time to have the discussion, and understandably so. It is a result that is regrettably compelled by current law, however.

Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

111 N. Wabash Ave.
Suite 1010
Chicago, IL 60602
(312) 450-6600 tel
(312) 450-6601 fax
www.uniformlaws.org

A Few Facts about

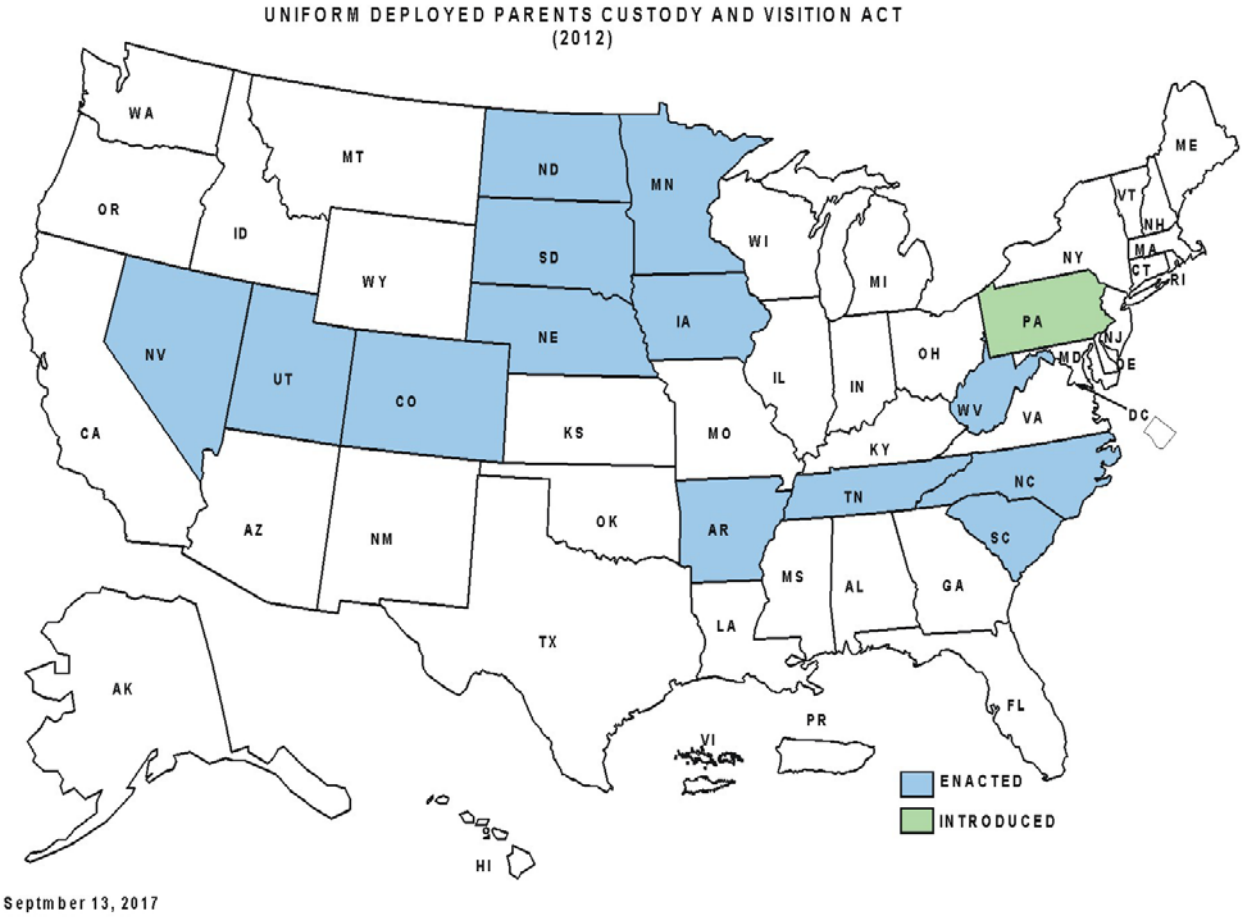
THE UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT (2012)

PURPOSE: The Uniform Deployed Parents Custody and Visitation Act addresses issues of child custody and visitation that arise when parents are deployed in military or other national service.

ORIGIN: Completed by the Uniform Law Commission in 2012.

APPROVED BY: American Bar Association, American Academy of Matrimonial Lawyers

ENACTED BY: Arkansas, Colorado, Iowa, Minnesota, Nebraska, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Utah, West Virginia



For further information about this Act, please contact Lindsay Beaver at (312) 450-6618 or lbeaver@uniformlaws.org

Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

111 N. Wabash Ave.
Suite 1010
Chicago, IL 60602
(312) 450-6600 tel
(312) 450-6601 fax
www.uniformlaws.org

UNIFORM DEPLOYED PARENTS CUSTODY AND VISTATION ACT

- Summary -

The increased deployment of service members has raised difficult child custody issues that profoundly affect both children's welfare and service members' ability to serve their country efficiently. Stories of service members struggling to balance their military duties with their parental duties have in recent years become commonplace. Because a significant proportion of service members are single parents, the Department of Defense indicates that problems related to child custody and visitation while the parent is deployed detrimentally impact the overall war effort and can impact the ability for service members to complete assigned missions

The only existing federal statutory protection for single-parent service members is the Servicemembers Civil Relief Act ("SCRA"), which governs the general legal rights of a deploying service member. Under the SCRA, judges must grant stays of legal proceedings, including custody proceedings, when military service materially affects the service member's ability to participate in the proceedings. Yet such stays are mandatory only for the first 90 days after deployment. After that time passes, entry of such stays are discretionary and are often overridden by the interests of the affected children in having custody issues resolved. Furthermore, the SCRA provides no procedures to facilitate entry of a temporary custody arrangement for the many service members who recognize that it is in their child's interests for custody to be settled during their absence. Additionally, the SCRA give courts no guidance regarding how to balance service members' interests against other relevant interests, including the best interests of the child.

The SCRA notwithstanding, issues of child custody and visitation are the proper province of state law under the constructs of federalism. Currently, state courts vary considerably in their approach to custody issues on a parent's deployment. Many courts will grant custody to the other natural parent for the duration of the deployment, even over the wishes of the deploying parent. Other courts will grant custody to the person that the service member wishes to designate as custodian, such as a grandparent. Further, at the end of a deployment, some courts have been reluctant to return custody to the deploying parent – even when the custody arrangement during deployment had been deemed only "temporary" – unless the service member can show the child to be significantly worse off living with the other parent.

To resolve these difficult issues, some states have enacted statutes that address custody issues facing service members. However, most of these statutes address only a small range of issues that impact cases involving the custody rights of service members. Furthermore, these statutes vary considerably with one another in both their scope and substantive provisions. Finally, many states have adopted no statutes on this issue.

The result is a system of considerable variability among states when it comes to the treatment of deploying parents, and in which deploying parents are sometimes penalized for their service without clear gains for their children. Because of the mobile nature of military service, and because a child's other parent will often live in or move to a different state than the deployed service member, bringing the child with them, there are many times that custody issues relating to the child of a service member will involve two or more states.

Responding to the critical need for uniformity and for efficient and just resolution of custody issues when a service member deploys, the Uniform Law Commission drafted the Uniform Deployed Parents Custody and Visitation Act (UDPCVA) in 2012. The goal of the UDPCVA is to facilitate expeditious and fair disposition of cases involving the custody rights of a member of the military. The UDPCVA ultimately promotes a just balance of interests—protecting the rights of the service member, the other parent, and above all the best interest of the children involved.

The UDPCVA is organized into five articles. Article 1 contains definitions and provisions that apply generally to custody matters of service members. It includes a notice provision requiring parents to communicate about custody and visitation issues as soon as possible after a service member learns of deployment. Another provision in this article integrates with the Uniform Child Custody Jurisdiction and Enforcement Act to declare the residence of the deploying parent not changed by reason of the deployment. The article also provides that when imminent deployment is not an issue, a court may not use a parent's past deployment or possible future deployment itself as a negative factor in determining the best interests of the child during a custody proceeding.

Articles 2 and 3 apply to custody issues that arise on notice of and during deployment. Article 2 sets out an easy procedure for parents who agree to a custody arrangement during deployment to resolve these issues by an out-of-court agreement. In the absence of the parents reaching an agreement, Article 3 provides for an expedited resolution of a custody arrangement in court. Article 3 also declares that no permanent custody order can be entered before or during deployment without the service member's consent.

Article 4 governs termination of the temporary custody arrangement following the service member's return from deployment. This article contains one set of procedures that applies when the parents mutually agree that a temporary custody agreement should be terminated; another set applies when the parents mutually agree that a temporary custody order entered by a court should be terminated; a third set applies when the parents reach no agreement regarding the termination of the temporary custody arrangement and require a court to resolve whether a return to the permanent custody arrangement is appropriate. Finally, Article 5 contains an effective date provision, a transition provision, and boilerplate provisions common to all uniform acts.

Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

111 N. Wabash Ave.
Suite 1010
Chicago, IL 60602
(312) 450-6600 tel
(312) 450-6601 fax
www.uniformlaws.org

WHY STATES SHOULD ADOPT THE UNIFORM DEPLOYED PARENTS CUSTODY AND VISTATION ACT

The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) addresses the wide variability in the ways that states handle child custody and visitation issues that arise when service members are deployed. Because of the mobile nature of military service, and because a child's other parent will often live in or move to a different state than the deployed service member, bringing the child with them, there are many times that that these custody issues involve two or more states. Yet different states now apply very different substantive law and court procedures from one another when custody issues arise on a parent's deployment. The resulting patchwork of rules makes it difficult for the parents to resolve these important issues quickly and fairly, hurts the ability of deploying parents to serve the country effectively, and interferes with the best interest of children.

The UDPCVA provides uniform, expeditious, and fair disposition of cases involving the custody rights of a member of the military. The UDPCVA ensures a proper balance of interests— protecting the rights of the service member, the other parent, and above all the best interest of the children involved.

Among its attributes that will improve state law, the UDPCVA:

- Encourages and facilitates mutual agreement between parents to a custody arrangement during deployment
- Provides a set of expedited procedures for entry of a temporary custody order during deployment
- Integrates with the Uniform Child Custody Jurisdiction and Enforcement Act, and declares the residence of the deploying parent not changed by reason of the deployment, thus protecting against jurisdictional litigation
- Allows the court, at the request of a deploying parent, to grant the service member's portion of custodial responsibility in the form of caretaking authority to an adult nonparent who is either a family member or with whom the child has a close and substantial relationship when it serves the child's best interest
- Declares that no permanent custody order can be entered before or during deployment without the service member's consent
- Guards against the possibility that courts will use past or possible future deployment as a negative factor in determining custody by service members without serious consideration of whether the child's best interest was or would be truly compromised by such deployment

MILITARY COMPENSATION AND ALLOWANCES AS IT PERTAINS TO CHILD SUPPORT

Wisconsin has very few statutes that pertain to how the courts should handle military compensation and allowances. One administrative rule argues that military allowances count as income, while another statute argues that relief from mortgage obligation is not to be imputed as income for the purposes of child support. The military attempts to relieve the burden of child support by offering BAH- DIFF*, but in turn, actually raises the child support obligation.

States with larger military populations have written laws specifically for their military families both to protect the children supported by child support as well as the military members. Let's look at the laws of Georgia; a state with one of the largest military populations in the country.

The following is Georgia's specific handling of military compensation and allowances;

Military compensation and allowances. Income for a parent who is an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the merchant marine of the United States, the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration, the National Guard, or the Air National Guard shall include:

(i) Base pay;
(ii) Drill pay;
(iii) Basic allowance for subsistence, whether paid directly to the parent or received in-kind; and
(iv) Basic allowance for housing, whether paid directly to the parent or received in-kind, determined at the parent's pay grade at the without dependent rate, but shall include only so much of the allowance that is not attributable to area variable housing costs.
Except as determined by the court or jury, special pay or incentive pay, allowances for clothing or family separation, and reimbursed expenses related to the parent's assignment to a high cost of living location shall not be considered income for the purpose of determining gross income.

This means that they use the non-locality rate. This not only benefits the children, as it allows them a portion of their military parent's BAH, but it also protects the interests of the military member during their obligated moves and housing situations. It also means child support will not have to decrease based on military moves, which creates stability.

The problem with counting the full BAH as well as military allowances as income were very well stated by Attorney David Purvis;

“Georgia has a very specific statute on calculating military pay for purposes of determining child and spousal support. The biggest aspect of this statute is how Basic Allowance for Housing
(BAH) is calculated. In Georgia, we are supposed to use the non-locality without dependent rate for the soldier's BAH rate for family law purposes.

The reason is simple: The BAH that is listed on the Leave and Earnings Statement (LES) changes based on the cost of living where the soldier lives. BAH for an E-5 pay grade at Fort Stewart is going to be far less than that same E-5 stationed in Paris, France, for example. If child support is determined based on the BAH as it shows on the LES (the adjusted-for-cost-of-living amount) and that soldier has a Permanent Change of Station (PCS) to a base where the cost of living is lower than it is in Savannah, the soldier's BAH will decrease, but the child support obligation remains the same.

This can have devastating financial consequences for the soldier.”

Using this calculation the state of Georgia recognized that there is a significant difference in the pay and expenses of the military parent as opposed to the non-military parent. Our circumstances are not the same. Non- military parents are not required to:

- get a haircut every week ($60 a month), or

- move every three years,

- pay for uniforms ($400 a year)

- live in a specific area code despite cost differences. Military members have to live within a certain number of miles of where they work. BAH, along with BAS and COLA are meant to help afford it.

Being in the military offers a great deal of benefits for children that aren't accounted for as well; including paid health care, with low outside costs.

Wisconsin has an obligation to recognize these differences and support the lifestyle of the military member as well. They contribute a great deal to their families, their state and their country.

Kimberly Graff

President - Founder

Protecting Military Families in Wisconsin

Bridging the gap between justice and families.

THE MANELY FIRM, P.C.

www.allfamilylaw.com

Office Locations

Savannah
427 E. York Street
Savannah, GA 31401
Phone: 912-748-1192
Fax: 912-200-6773

Marietta
211 Roswell Street
Marietta, GA 30060
Phone: 770-421-0808
Fax: 770-421-0288

Atlanta
121 MLK Jr. Drive
Suite 430
Atlanta, GA 30303
Phone: 404-207-1911
Fax: 770-421-0288

Lawrenceville
148 S. Clayton Street
Suite B
Lawrenceville, GA 30046
Phone: 678-459-2287
Fax: 770-421-0288

May 4, 2018

Re: State of Georgia's approach to calculating service member's income for child support purposes

To whom it may concern:

It is my understanding that the State of Wisconsin is considering revising its approach to calculating income of active duty service members and I have been contacted to provide some insight into how Georgia approaches this issue. By way of a small introduction, I am a partner at The Manely Firm, P.C., practicing exclusively in the area of family law and managing the firm's Savannah, Georgia location. I am also the Adjunct Professor of Domestic Relations at Savannah Law School and I serve as a Special Assistant Administrative Law Judge for the Office of State Administrative Hearings in Georgia.

Our statute O.C.G.A. § 19-6-15(f)(1)(E) provides in part:

> *Military compensation and allowances. Income for a parent who is an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the merchant marine of the United States, the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration, the National Guard, or the Air National Guard shall include:*
>
> *(i) Base pay;*
>
> *(ii) Drill pay;*
>
> *(iii) Basic allowance for subsistence, whether paid directly to the parent or received in-kind; and*
>
> *(iv) Basic allowance for housing, whether paid directly to the parent or received in-kind, determined at the parent's pay grade at the without dependent rate, but shall include only so much of the allowance that is not attributable to area variable housing costs.*
>
> *Except as determined by the court or jury, special pay or incentive pay, allowances for clothing or family separation, and reimbursed expenses related to the parent's assignment to a high cost of living location shall not be considered income for the purpose of determining gross income.*

The basic gist of the statutory scheme is that the income for most service members is calculated as follows: Base Pay + BAS +BAH at the non-locality without dependent rate. The Judge can include special and incentive pay, but the majority of my cases that involve active duty service members the income is calculated as described above.

Georgia's child support guidelines do not allow for automatic modifications based on income. For active-duty service members (SM), the Basic Assistance for Housing (BAH) that they actually receive includes a cost of living adjustment (COLA) for their duty station. If child support is calculated based on the SM's BAH with the COLA and the SM has a permanent change of station to a locale with a lower COLA, the SM's BAH pay will be decreased, but the child support obligation remains the same. That requires the SM to file for a modification which may take months to resolve, all the while continuing to pay on a child support obligation that was calculated on more take home pay than what the SM is currently receiving.

The example I often give is as follows: SM is stationed in Washington D.C. SM's actual BAH is inflated due to the very high cost of living in D.C. If child support is calculated based on that that full, inflated BAH and the SM is later moved to Savannah, Georgia and the SM's BAH is reduced to reflect the change in the cost of living, SM's child support obligation can become quite unmanageable.

The general policy in Georgia for child support calculations is to afford "children of unmarried parents, to the extent possible, the same economic standard of living enjoyed by children living in intact families consisting of parents with similar financial means." (O.C.G.A. § 19-6-15(c)(1). Consistent with that policy, a Judge may, in his or her discretion, include cost-of-living adjustments and special pay in situations where the SM has the ability to pay a higher amount than the calculation above provides or the needs of the child dictate a higher obligation. But for the majority of military families, the basic calculation described above strikes a fair balance between the needs of the children being provided for and the SM's ability to pay, bearing in mind the current scheme for child support modifications in Georgia.

If I can ever be of further assistance, please do not hesitate to contact me.

Sincerely,

David B. Purvis
Partner, The Manely Firm P.C.

DBP/mls