

# HOUSE . . . . . No. 4502

---

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the Year Two Thousand Ten  
\_\_\_\_\_

An Act relative to service member's custodial rights..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           Amendment to Mass General Laws c. 208 section 28 and to Mass General Laws c. 215  
2   section 6c, by adding to each law the following new paragraphs:

3           1.       As used in this section:

4           (a)     The term “deployment” means the temporary transfer of a service member serving  
5   in an activeduty status to another location in support of combat or some other military operation,  
6   to include any tour of duty classified by the service member’s branch of the armed forces as  
7   “remote” or “unaccompanied.”

8           (b)     The term “mobilization” means the callup or activation of a National Guard or  
9   Reserve service member to extended active duty status. For purposes of this definition,  
10   'mobilization' does not include National Guard or Reserve annual training.

11          (c)     The term “temporary duty” means the transfer of a service member from one  
12   military base to a different location, usually another base, for a limited period of time to  
13   accomplish training or to assist in the performance of a noncombat mission.

14           (d)     Military duties impacting parenting functions means those obligations imposed,  
15 voluntarily or involuntarily, on a parent serving in the armed forces that may interfere with that  
16 parent's ability to fulfill his or her responsibilities under a temporary or permanent custody or  
17 visitation order.

18           2.     When a parent receives deployment, mobilization, or temporary duty orders from  
19 the military that involve moving a substantial distance away from the parent's residence or  
20 otherwise will have a material effect on the parent's ability to exercise parenting functions under  
21 a temporary or permanent custody or visitation order, the court shall, upon motion of either  
22 parent, hold an expedited hearing for the purpose of entering such temporary orders for the care,  
23 custody and maintenance of the minor child or children during the period of such deployment,  
24 mobilization or temporary duty as are in the best interest of the child or children. The expedited  
25 hearing shall be held prior to the start of the deployment, mobilization or temporary duty, except  
26 that it may be held after if the motion for the hearing is filed less than seven days before the start  
27 of the deployment, mobilization or temporary duty.

28           3.     Any custody or visitation order for the child or children entered on account of or  
29 during the parent's temporary duty, deployment or mobilization shall end no later than 14 days  
30 after the temporary duty, deployment or mobilization ends, but this shall not impair the  
31 discretion of the court to conduct an expedited or emergency hearing upon the filing of a motion,  
32 supported by an affidavit, alleging immediate danger or irreparable harm to the child.

33           4.     The court shall, upon reasonable advance notice and for good cause shown, allow  
34 a military parent to present testimony and evidence by electronic means in custody and visitation  
35 matters instituted under this section when the military duties of the parent have a material effect

on the parent's ability to appear in person at a regularly scheduled hearing. The phrase 'electronic means' includes communication by telephone, video teleconference, or the Internet.

5. The effect of a parent's military duties on parenting functions, and the temporary disruption to the child's schedule as a result of those military duties, shall not constitute a material and substantial change in the circumstances of the parties warranting modification of a prior judgment of custody or visitation.

6. If the parent with temporary or permanent custody or visitation rights receives military temporary duty, deployment, or mobilization orders that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to exercise parenting functions, the court may delegate the parent's custodial or visitation rights, or a portion thereof, to a member of the child's family having a close and substantial relationship to the child for the duration of the parent's absence, if delegating such rights is in the child's best interest. Such a court ordered temporary delegation of the military parent's custodial or visitation rights shall not create a separate right to custody or visitation for a person other than a parent.