



OFFICE OF THE STAFF JUDGE ADVOCATE
101ST AIRBORNE DIVISION (AIR ASSAULT) AND FORT CAMPBELL
CLIENT SERVICES
(270) 798-4432

CHILD CUSTODY AND VISITATION

Factors in Granting Custody. Courts generally look at who has primarily taken care of the child during the marriage (for example, washing, feeding and clothing the child, or helping the child with homework), who has the best approach to discipline, who has cared for the child since separation (if the couple has already separated), what work schedules parents have, and how each parent can provide for the physical, emotional, educational, religious and social needs of the child. The courts of most states do not establish an automatic preference for either mother or father, but rather, look closely at which parent will best promote the welfare and interests of the children.

Separation Agreements on Custody. Unless a separation agreement has been incorporated into a court order or divorce decree, it is *only a contract* between you and the other parent, not a court order, and thus is not enforceable by the court.

Visitation Rights. Ordinarily the noncustodial parent is entitled to reasonable visitation rights with a minor child except in extraordinary situations, such as when the noncustodial parent has a history of abusing the child. Visitation can be flexible and unstructured, assuming the parties can get along and agree on the terms of visitation, or it can be highly structured, with certain days and times set out with great specificity.

Where to File for Custody. The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), adopted by all states except Massachusetts, provides that a person can file an action involving custody of a minor child in the child's "home state," defined as the state where the child has lived with a parent for at least six consecutive months prior to the commencement of the proceedings. If the child is younger than 6 months, his home state will be the one in which the child lived from birth with either of his parents. If there is not a "home state," the state to assume jurisdiction will be the one with which the child and at least one of his parents have a significant connection and not only physical presence. **Legal Assistance attorneys cannot help you obtain a court decree for child custody. You will need to retain a civilian attorney.**

Court Expenses. Under many states' laws, the court may award necessary and reasonable expenses to the prevailing party such as attorney's fees, communication and travel expenses, witness expenses, and even child care during the course of the proceeding.

Enforcement of Out of State Court Orders. According to the UCCJEA, a custody order issued by a court of one state shall be recognized and enforced by a court of another state. You may additionally want to register the decree in the county where you reside or in the county where the other parent lives.

Asking for New Custody Order in a Different State. Under the UCCJEA and the Parental Kidnapping Prevention Act (PKPA), the court in a custody case must always inquire into whether the child has been the subject of custody litigation in any other state. When a judge finds that another court has made a custody determination, the judge must enforce the determination. Only if the first court has released or transferred jurisdiction to the new state court may that court assume jurisdiction to hear the custody case (unless there is an immediate and clear emergency –such as abandonment or abuse— affecting the child's welfare).

Changing the Terms of Custody Orders. No custody order is ever permanent. However, once a parent is awarded custody in a court order, the judge can change the order only if there is a substantial change of circumstances affecting the best interest and welfare of the child or upon agreement of both parties.

Consultation with Army attorneys is free to eligible clients. If you have questions or need help with legal problems, call the Fort Campbell Legal Assistance Office at 270-798-4432 or come by the office (Building 2765) Monday, Tuesday, Wednesday from 0930 to 1630 hours, on Thursday from 1300-1630, or on Friday 0930 to 1500.