

By Sara Graves

Deployed service members fight for custody rights, many of which vary from state to state.

When Lt. Gary S. deployed to Afghanistan shortly after 9/11, little did he know that he would be one in a growing number of service members fighting two battles: one overseas and one in the courtroom.

Lt. Gary, last name withheld at his request, is a 21-year veteran U.S. Navy Seal deploying on repeat missions. Following one deployment, his ex-wife did not return from one of her trips to Israel; instead, refusing to bring their then two-year-old son back to the states, using the child as leverage to force him to file for divorce in California, he said.

As Gary fought for years to get his son back, others heard of his courtroom fight and waged a separate battle on behalf of him and other service members facing custody challenges related to their deployments.

In 2005, California Senator Bill Morrow (R-Oceanside), with the help of Senator Denise Moreno Ducheny (D-San Diego), drafted SB 1082, which addressed the problem of returning service members who were behind on child support following their deployment.

Michael Robinson, a policy consultant, cofounder and executive director of California Alliance for Families and Children, helped get SB 1082 passed.

"The issue came to my attention after dealing with paternity fraud legislation ..." Robinson said. "I started to become better informed on a number of family law inequities facing service personnel, child custody, jurisdictional problems, fair and



Lt. Gary, a Navy Seal, lost custody of the son to his ex-wife, who now lives in Israel. The Federal government and many states have since approved laws protecting custody rights for deployed service members. Photo courtesy Lt. Gary

timely child support modifications for National Guard and reservists."

Later in 2005, Robinson and Jim Semerad of Dads of Michigan helped get Michigan House Bill 5100 passed, which prevented a custody change during a deployment and prevented the courts from using military commitments as a negative factor when determining custody arrangements.

After HB 5100 became law, more states approved custody statutes to protect service members.

In North Carolina, state legislators ruled the following:

- If the parent with visitation rights receives military orders that requires

When the Family Care Plan Isn't Enough

While a Family Care Plan (FCP) is an important first step in addressing the needs of the service member and his or her family while deployed, it may not be enough to legally protect him or her in the event of a challenge to an established custody order.

*"A Family Care Plan is unilateral, like a will," said Mark Sullivan, family law specialist, retired JAG colonel who practices in Raleigh, N.C. and author of *The Military Divorce Handbook* (ababooks.org). "You can say anything you want. . . It's not you and me agreeing on anything; it is simply me telling my commander what will happen while I'm away."*

The only signature required on a FCP is the service member's, he said. The signature of the other parent is optional. Therefore, the wishes stated in the FCP, in many cases, are not honored in civilian courtrooms.

Instead, Sullivan advises service members to work up a separate, mutually-binding agreement that spells out all custodial issues from before the service member receives orders to after they return from deployment.

In the event an agreement is not mutual, the court can mediate such an agreement. Once submitted to the court, this would serve as an amendment to the current custody agreement. In the event of a custody challenge, the court would address the challenge according to what was stated in the agreement.

Mike Robinson, a policy consultant and executive director of California Alliance for Families and Children agrees, adding that ideally it would be good to have a boilerplate agreement created and distributed by JAG officers that would hold up in court and establish stipulations for every situation that may occur relating to a deployment.

For instance, the agreement might address what would happen in the event that:

- the service member is physically or mentally incapacitated;
- who would retain custody of the children during a deployment;
- when and how would the children be returned to the service member after the deployment if the service member is the primary custodian;
- what would happen to the custody of the children if the relationship dissolves during an extended military operation.

Therefore, regardless of what occurs before, during or after a deployment, there would be a plan in order, legally agreed upon and submitted to the court in advance of a deployment, to address those issues.

"The more insurance you have before you leave," Robinson said, "the less likely you will have to litigate and fight when you get home."

him or her to move "a substantial distance" from their home, the court could grant a portion of the custody to a close family member if it is in the best interest of the child.

- Temporary custody orders for the child would end no later than 10 days after the parent returns, unless it was not in the best interest of the child.
- Service members could "appear" in court "by electronic means" if they couldn't otherwise appear in person. The electronic means included telephone, video teleconference or the Internet.

Colorado's House Bill 08-1176 determined that if a custody order change was made solely because a service member was deployed, that would be considered an interim order. The original custody order that was in place before the deployment would be in effect again once the deployment was over.

Then in 2008, the fight for service members went national with a revision to the Servicemembers Civil Relief Act of 2003 (SCRA). The SCRA, which protects service members on leases, taxes, and insurance during deployments, was revised to specifically protect service members in child custody proceedings.

To date, approximately 29 states have passed bills further defining the laws concerning custody protection for deployed service members.

"The states are doing a remarkably good job of passing legislation to protect military personnel," said Mark Sullivan, an attorney in North Carolina who specializes in family law, and a retired Army JAG Colonel.

Unfortunately for Lt. Gary, however, his battle for custody of Sean was lost in court. The courts ruled Sean would stay with his mother in Israel. Lt. Gary has since remarried and has four other children.

To honor his son, Lt. Gary wrote a book called *Never Far Apart* (www.neverfarapart.com). The book



Lt. Gary met his new wife, Lori, while attending parenting classes during his lawsuit to gain custody of his son. Photo courtesy Lt. Gary

is the first of a five-part series that helps children better cope with extended periods of separation, he said. "It reminds the child that the parent is also missing them," Lt. Gary said, "thinking of them every minute of every day."

"The book," Lt. Gary adds, "is my effort to let my son know that although we are geographically separated by thousands of miles of ocean, we are never far apart. It represents all that is me ... for him." ●