

Introduced by

Human Services Committee

(At the request of the Adjutant General)

1 A BILL for an Act to create and enact a new section to chapter 14-09 of the North Dakota
2 Century Code, relating to transfer of visitation rights of servicemembers; and to amend and
3 reenact section 14-09-00.1 of the North Dakota Century Code, relating to definitions.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 14-09 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Visitation proceedings involving a military parent.**

- 8 1. In determining the availability of a parent for visitation, if a parent is called to active
9 duty service or is in a position where the parent may be called to active duty service,
10 the court shall take particular care to ensure that the child has the maximum
11 opportunity, consistent with the best interests of the child, to have contact with the
12 parent. Except as provided in this section, a parent's call to active duty service and the
13 resultant temporary disruption to the child may not be a factor in a court's decision to
14 grant or deny a petition for visitation.
- 15 2. A parent who is called to active duty service may petition a court of competent
16 jurisdiction for visitation. The petition must be construed to be an application for
17 affirmative relief, consistent with the protections afforded under the Servicemembers
18 Civil Relief Act [50 U.S.C. App. 501-596] and may include a request to delegate the
19 activated parent's visitation rights to a family member.
- 20 3. A court shall order a delegation of visitation rights based on a petition filed under
21 subsection 2 if the court finds that:
- 22 a. The family member receiving the delegation has an existing close relationship to
23 the child; and
- 24 b. The delegation is in the child's best interests.

- 1 4. A hearing on a petition filed under this section must be expedited by the court.
- 2 5. A parent who is called to active military service may not be found to have waived any
3 rights or protections with regard to custody or visitation of the activated parent's child
4 unless the activated parent expressly waives the right or protection in writing or on the
5 record.
- 6 6. A court order entered under this section must require that:
- 7 a. The nonactivated parent make the child reasonably available for visitation to the
8 activated parent when the activated parent is on leave;
- 9 b. Each parent facilitate contact, including telephonic and electronic contact,
10 between the other parent and the child if the contact is in the child's best
11 interests. Electronic contact with a video image must be facilitated whenever
12 feasible;
- 13 c. The activated parent provide timely information to the nonactivated parent
14 regarding the activated parent's leave schedule; and
- 15 d. Each parent provide immediate notification of a change of address or contact
16 information.
- 17 7. In making a determination of the best interests of the child, the court shall consider the
18 factors under section 14-09-06.2 to visitation, delegation, and custody orders issued
19 under this section. In addition, there is a rebuttable presumption that an activated
20 parent's visitation rights may not be delegated to a family member who has a history of
21 perpetrating domestic violence against a spouse, a child, or a domestic living partner
22 or to a family member with an individual in the family member's household who has a
23 history of perpetrating domestic violence against a spouse, a child, or a domestic living
24 partner.

25 **SECTION 2. AMENDMENT.** Section 14-09-00.1 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **14-09-00.1. Definitions.**

28 As used in this chapter, unless the context otherwise requires:

- 29 1. "Active duty service" means military services performed in compliance with a valid
30 order received by an active duty or reserve member of the armed services of the
31 United States, national guard, or United States coast guard to report for combat

- 1 operations, contingency operations, peacekeeping operations, temporary duty, a
2 remote tour of duty, or other active service for which the deploying parent reports
3 unaccompanied by any family member. "Active duty service" includes the period from
4 which the deployed parent receives and is subject to deployment orders and the
5 period in which the parent is awaiting travel or remains deployed because of sickness,
6 wounds, leave, or other lawful cause.
- 7 2. "Decisionmaking responsibility" means the responsibility to make decisions concerning
8 the child. The term may refer to decisions on all issues or on specified issues, but not
9 child support issues.
- 10 3. "Family member" means a person who is an adult sibling, aunt, uncle, first cousin, or
11 grandparent related by blood, adoption, or marriage or a stepparent to the child who is
12 the subject of a visitation order issued under this section.
- 13 2-4. "Parental rights and responsibilities" means all rights and responsibilities a parent has
14 concerning the parent's child.
- 15 3-5. "Parenting plan" means a written plan describing each parent's rights and
16 responsibilities.
- 17 4-6. "Parenting schedule" means the schedule of when the child is in the care of each
18 parent.
- 19 5-7. "Parenting time" means the time when the child is to be in the care of a parent.
- 20 6-8. "Primary residential responsibility" means a parent with more than fifty percent of the
21 residential responsibility.
- 22 7-9. "Residential responsibility" means a parent's responsibility to provide a home for the
23 child.