

## LAW REVIEW<sup>1</sup> 11017

### Hawaii Legislature Enacts Legislation Protecting Military Parents in Child Custody Disputes

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#### 5.2—Military Service and Child Matters

In 2010, the Hawaii Legislature enacted a new law to protect the interests of military personnel (including National Guard and Reserve personnel) in child custody matters. The new law provides for expedited hearings in cases where one or both parents are deploying, and it also provides that deployment should not be a negative factor in determining permanent child custody arrangements. This is a favorable development, and I hope that other states will follow suit.

As Colonel John Odom and I explained in Law Review 0951, marriage, divorce, child custody, marital property division, and other domestic relations matters have always been governed by state law and state courts, not federal law and federal courts, in our country. We believe that this should continue to be the case, even in those child custody cases where one of the parents is a member of the National Guard or Reserve and has been called to the colors. Putting these cases in federal court would not serve the interests of Reserve Component members or their

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<sup>1</sup>I invite the reader's attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

<sup>2</sup>BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at [SWright@roa.org](mailto:SWright@roa.org).

children. If you think that child custody litigation is expensive in state court, just wait until petitions for removal to federal court and remand petitions (trying to get cases back to state court) begin to be filed.

When the parent with primary custody is deployed, the other parent will normally take over primary custody, until the military parent returns from deployment. If there is a material change in circumstances (and deployment of the parent is certainly a material change), it is the province of the court, not the custodial deploying parent, to decide or approve a change in the custody arrangements. The custodial parent does not have the legal power or right to turn over custody to his or her parents, for example, in the face of objections from the other parent.

When the deploying parent returns from war, the pre-deployment custodial arrangements should be restored, in all but the most unusual circumstances. The fact of deployment must not be used as a reason for changing permanent custodial arrangements. Otherwise, the prospect of losing one's child could be a most powerful disincentive to recruiting and retention in the Reserve Components.

There are many issues that are addressed by state legislatures and local governments that significantly affect ROA's national defense mission, but we of the national staff have our hands full here in Washington. I call upon ROA departments and chapters to monitor and address these issues in the state capitals, county courthouses, and city halls around the country. I reiterate an important point that I first made more than a decade ago, in Law Review 16 (Aug. 2000).

#### **Please join or support ROA**

This article is one of 2,300-plus "Law Review" articles available at [www.roa.org/lawcenter](http://www.roa.org/lawcenter). The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established on 10/1/1922 by a group of veterans of "The Great War," as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Through these articles, and by other means, including amicus curiae ("friend of the court") briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their

dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's eight<sup>3</sup> uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at [www.roa.org](http://www.roa.org) or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America  
1 Constitution Ave. NE  
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<sup>3</sup>Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.