

# Frequently Asked Questions

**The father's name is not on the birth certificate; do I have to complete a Family Care Plan?** YES

**I am married and have legal custody of my child from a previous relationship. My new husband can keep my child when I deploy. Do I need a Family Care Plan?** YES, but if your new husband has not adopted the child, you also need to obtain a court order allowing him to keep custody of the child during your deployment; otherwise, the child's biological father may exert his own custody rights.

**My baby's father has had nothing to do with him since birth, how does he have rights to take my child?** In most states, parents have equal rights to their child until a court determines otherwise. When it comes to custody matters, you not only need a Family Care Plan, but you also need a valid court order that specifies you have custody and who you want to have physical custody of the child while you are deployed.

**I gave my mother a Power of Attorney to care for my child during deployment, how can someone overrule my Power of Attorney?** With few exceptions, biological parents have superior rights to their children. The Power of Attorney does not affect the other parent's custodial rights which are superior to those of a grandmother under a Power of Attorney. You need a court order that specifies your custody rights and who you want to have physical custody of the child while you are deployed.

**If I have court ordered custody, can the other parent take my child while I'm deployed?** Generally speaking, a non-custodial biological parent may petition a court to change custody at any time, but a court will consider what is in the best interest of the child in making its determination. Many states may not change custody solely based upon your deployment, although deployment will be a consideration.

**How can I comply with the family care plan and keep my child?** a) Develop a workable plan with the other parent, b) Go to court to get that plan converted to a court order, c) Include deployment language in every court order.

# What steps should I take?

1. Read the Family Care Plan (FCP) regulation that applies to your Branch of Service. For the Navy it is OPNAVINST 1740.4d and for the Marine Corps it is MCO 1740.13C.
2. Create a workable FCP and get a court order addressing custody that allows you to place the child with someone other than the biological or adoptive parent in the event of deployment.
3. Mothers who want custody should go to court and get a custody and support order within 6 months of the child's birth.
4. If you are in the process of a divorce or custody proceeding, you should include a deployment custody provision in all temporary and permanent court orders.
5. If you do not have a court order, send a copy of the FCP to the non-custodial parent *at least* 120 days prior to deployment. This allows time for any court challenges to be resolved or agreements to be worked out. It does not guarantee that the agreement or FCP will be honored unless it has been converted to a court order
6. Seek legal help from a Legal Assistance attorney or a private attorney.

## FCP RESOURCES

**This handout is for information purposes only and is not intended to be legal advice.** See a legal assistance attorney to review your Family Care Plan.

Legal assistance office locator:  
<http://legalassistance.law.af.mil/content/locator.php>

## FAMILY CARE PLANS

(Developed by Dwain Alexander, RLSO MIDLANT, OJAG  
Code 16 & JAD Legal Assistance Division)  
Code 16 Standardized Form – Updated Aug 2014

## YOU



## YOUR FAMILY



## YOUR DEPLOYMENT



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## WHAT IS A FAMILY CARE PLAN?

Sailors and Marines are on active duty 24 hours a day 7 days a week for 365 days a year. They are worldwide deployable based upon the needs of the Department of the Navy and the nation they defend. Deployments and temporary duty assignments can be made with only months or a few hours of advance notice. The demanding service requirements for active duty and mobilized reservists requires that there be a plan in place to specify who will care for the Servicemember's minor children during periods of absence.

The Family Care Plan (FCP) is a Department of Defense requirement for all single parents, married dual military couples and married Servicemembers who have custody of children from a previous relationship. Each of these Servicemembers must have a written plan for the care of their children during periods of the Servicemembers absence.

The plan includes detailed guidance for the housing, financial support, education, medical care and, if necessary, relocation of minor children and incapacitated adults who are in the custody of the deployed Servicemember.

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## THE IMPORTANCE OF GETTING A COURT ORDER

Completing and executing a Family Care Plan (FCP) is a requirement for military personnel based on DoD Directives and regulations of every branch of military service. In many instances the completion of the FCP is just the beginning of the process necessary to protect the custody of your child. The FCP is not recognized by civilian courts as a lawfully enforceable custody determination. The only document that is recognized as lawfully enforceable by the civilian courts is a properly issued court order incorporating the terms and conditions of the FCP.

The FCP requires that the Servicemember appoint a person to care for the minor child during periods of absence. If the person appointed is not the other biological parent, the FCP may violate the custody/visitation rights of the other parent and he or she may be charged with contempt of court by taking the child.

A parent can have possession and not have legal custody. Possession means that you have the child with you. Custody is a legal determination by a court of law that your right to the child is superior to others. The FCP does not modify custody rights. Legal custody determinations are made only by civilian courts.

Executing the FCP without the knowledge and consent of the other biological parent may appear to be an attempt by the Servicemember to hide the child from the other parent. Courts may view such attempts as interference with custodial rights of the other parent. In response to this perceived act, the court may take emergency action to correct such a perceived wrong and grant custody to the other parent.

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## WHAT IF I HAVE A FCP BUT NO COURT ORDER?

### SCENARIO

A young servicemember, and mother of two, is in her second year of military service and is about to go on her third deployment.

She has a detailed FCP and has followed it on each of her previous deployments. She is unmarried and lives in Washington with both children. There is no court order for custody. The father of her eldest son disappeared and the father of her daughter agreed that when the Servicemember deployed, the youngest child should stay with the Servicemember's mother, because the children get to stay together at Grandmom's in Texas.

As she has done in the past, the Servicemember advises her daughter's biological father that their daughter will be in Texas during the deployment. ***This time he complains*** about child support and ***wants the daughter to stay with him*** so he will not have to pay child support.

The Servicemember ignored the father. She sent both of the kids to Grandma in Texas because she wanted to keep the kids together.

The Servicemember deployed in January. In February the father went to court and filed for custody and support. The father's attorney argued that the child had been abandoned and left in Texas by the mother. The court ordered that the father should have custody of the daughter during the deployment.

The Servicemember later got an e-mail informing her that her daughter's father showed up with the police and a court order and took the daughter away to live with him.