

## **Soldier Loses Custody of Child After Iraq Tour**

Advocates for military families say a growing number of soldiers are losing custody of their children, not because they're bad parents but because they've been deployed overseas to Iraq and Afghanistan.

A bill signed by President Bush last month strengthens protections for service members and their families. But legal experts say some military moms and dads are still vulnerable.

### **Punishment to the Soldier**

On the outskirts of Albany, N.Y., Tanya Towne coaxes her 4-year-old son Darren to eat. Towne's other child — her 12-year-old son, Derrell — isn't home. Derrell no longer lives with his mother.

"He's in Virginia, so I hardly get to see him at all," Towne says.

Towne divorced Derrell's father, Richard Diffin, eight years ago. She was granted primary custody and raised Derrell, along with her second son from a different marriage.

But when Towne's National Guard unit was deployed to Iraq in 2004, a family court judge in Montgomery County, N.Y., granted temporary custody to Derrell's father.

The boy went to Virginia, while Towne spent a year guarding convoys near Tikrit.

Just before she returned home, her ex-husband asked for permanent custody of Derrell.

Following a trial, the family court granted his petition.

Towne says she's certain her child was taken from her because of her time overseas.

Towne appealed and last month, a state appeals court in New York issued its ruling. The five-judge panel praised Towne, calling her an excellent mother. But in a unanimous ruling, the judges upheld the family court's decision.

The judges found that the deployment and other changes in Towne's life — including the breakup of her second marriage — had contributed to an unstable home life. Towne says she was devastated.

"I don't care how they word it — it's a punishment to the soldier," Towne says. "The whole reason I'm in this situation is because I did a job for the military and it's gotten me nowhere."

### **Trend on the Rise**

Pentagon officials and military-family support groups say there are no statistics on the number of military parents who have lost custody of their children following deployments.

But they agree that the number is increasing, sending waves of anger and fear through the military.

The Army Times newspaper published a scathing editorial on the subject last month, written

by managing editor Chuck Finch.

"We have a volunteer military, and the idea of volunteering to serve your country and then facing the prospect of losing your children — it's a little mind-boggling," Finch says.

In January, President Bush signed a bill that included new language designed to strengthen protections for military parents in custody cases.

Now, custody cases must be delayed for at least 90 days during overseas deployments. The bill also requires that attorneys be appointed to represent military parents in such cases.

But Greg Rinckey, a former Army attorney who specializes in military law, says judges are still free to rule that lengthy and repeated deployments have disrupted a soldier's home life to such a degree that a child's custody should be altered.

"In my experience in the JAG corps, I can say that this happens hundreds of times across the nation, if not even more," Rinckey says.

#### A Job Choice

Diffin, Towne's ex-husband, is himself a former soldier and says he was deployed to Eastern Europe for the first nine months of Derrell's life.

"I was raised military. I understand the potential damage that constant moving around can do to a child," Diffin says.

Diffin acknowledges that he never sought custody of his son before his ex-wife was deployed to Iraq.

And he agrees that his case raises troubling questions for military parents. But Diffin still says his home is the best place for Derrell.

"I believe it to be the right decision," Diffin says, "and I'm glad I'm not the one who had to make it."

Diffin's attorney, Robert Cohen, goes a step further, arguing that soldiers such as Towne put their rights as parents on the line when they volunteer for military duty.

"She was not drafted. This was a job choice. She went into it with open eyes," Cohen says.

Towne still works full time for the National Guard. But she says the legal battle over custody of her son has left her penniless.

"So it's been very, very traumatic just trying to sustain day-to-day life while still trying to get my son back," Towne says.

Towne says she hopes that New York's state Supreme Court will review her case. Meanwhile, the courts have ordered her to pay \$500 a month in child support for her son.