



# House of Representatives

General Assembly

**File No. 505**

February Session, 2012

Substitute House Bill No. 5395

*House of Representatives, April 18, 2012*

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING CUSTODY ORDERS FOR DEPLOYED MEMBERS OF THE ARMED FORCES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) For the purposes of this  
2 section:

3 (1) "Armed forces" means the United States Army, Navy, Marine  
4 Corps, Coast Guard and Air Force and any reserve component thereof,  
5 including the Connecticut National Guard performing duty as  
6 provided in 32 USC;

7 (2) "Deploy" means military service in compliance with military  
8 orders received by a member of the armed forces to report for combat  
9 operations, contingency operations, peacekeeping operations, a remote  
10 tour of duty or other active duty service. Deployment includes a  
11 period during which a member of the armed forces remains subject to  
12 deployment orders and remains deployed on account of sickness,  
13 wounds or other lawful cause;

14 (3) "Deploying parent" means a parent who is a member of the  
15 armed forces and has been notified by military leadership that he or  
16 she will deploy or mobilize with the armed forces;

17 (4) "Mobilize" means the call-up of National Guard or Reserve  
18 service members to extended active service. For purposes of this  
19 definition, "mobilization" does not include National Guard or Reserve  
20 annual training, inactive duty days, drill weekends, temporary duty or  
21 state active duty; and

22 (5) "Nondeploying parent" means a parent who has not been  
23 notified by military leadership that he or she will deploy or mobilize  
24 with the armed forces.

25 (b) If a deploying parent is required to be separated from a child of  
26 such parent during a deployment or mobilization, a court shall not  
27 enter a final order of custody or visitation modifying a final order of  
28 custody or visitation issued pursuant to section 46b-56, 46b-56a or 46b-  
29 61 of the general statutes until ninety days after the deployment or  
30 mobilization ends, unless such modification is agreed to by the  
31 deploying parent.

32 (c) If a parent who is a member of the armed forces has joint or sole  
33 custody of a child receives notice from military leadership that he or  
34 she will deploy or mobilize in the near future and will be required to  
35 be separated from such child due to such deployment or mobilization,  
36 then upon motion of such deploying parent or the nondeploying  
37 parent, a court may enter temporary orders of custody or visitation  
38 modifying final orders of custody or visitation during the period of  
39 such deployment or mobilization if: (1) The deployment or  
40 mobilization would have a material effect upon the deploying parent's  
41 ability to exercise parental rights, responsibilities or parent-child  
42 contact as set forth in the existing final orders of custody or visitation,  
43 and (2) modification is in the best interests of the child. In issuing such  
44 temporary modification orders, the court shall be guided by the  
45 provisions of the general statutes pertaining to custody and visitation.  
46 Motions for temporary modification because of deployment or

47 mobilization shall be heard by the court as expeditiously as possible  
48 and shall be given priority for this purpose. All temporary  
49 modification orders shall include a specific transition plan to facilitate  
50 a return to the predeployment order over the shortest reasonable time  
51 period after the deployment or mobilization and, taking into  
52 consideration the child's best interest. Temporary modification orders  
53 issued pursuant to this section shall designate the parent's parental  
54 rights, responsibilities and parent-child contact during a period of  
55 leave granted to the deploying parent, in the best interests of the child.  
56 Upon motion of such parent and in accordance with section 46b-59 of  
57 the general statutes, the court may delegate such parent's right of  
58 contact, or a portion thereof, to a family member, a person with whom  
59 such parent cohabits, or another person with a close and substantial  
60 relationship to the minor child or children for the duration of the  
61 deployment or mobilization, if it is in the child's best interests. Such  
62 delegated contact does not create separate rights to parent-child  
63 contact for a person other than a parent. The temporary modification  
64 orders shall expire upon the completion of the transition plan, and the  
65 prior final order issued pursuant to section 46b-56, 46b-56a or 46b-61 of  
66 the general statutes shall be in effect.

67 (d) A temporary court order modifying final orders of custody or  
68 visitation issued under subsection (c) of this section shall require that:  
69 (1) The nondeploying parent make the child reasonably available to  
70 the deploying parent when the deploying parent has leave; (2) the  
71 nondeploying parent facilitate opportunities for telephonic, electronic  
72 mail, and other such contact between the deploying parent and the  
73 child during deployment or mobilization; and (3) the deploying parent  
74 provide timely information regarding his or her leave schedule to the  
75 nondeploying parent. Changes in actual leave dates shall not be used  
76 by the nondeploying parent to prevent parent-child contact.

77 (e) A temporary court order modifying final orders of custody or  
78 visitation issued under subsection (c) of this section shall specify that  
79 deployment or mobilization is the basis for the order and shall be  
80 entered by the court as a temporary order. The order shall further

81 require the nondeploying parent to provide the court and the  
82 deploying parent with thirty days' advance written notice of any  
83 change of address and any change of telephone number, unless a court  
84 has ordered that the deploying party is not entitled to this information.

85 (f) If pendente lite orders of custody or visitation are in place or if  
86 there are no existing orders of custody or visitation establishing the  
87 terms of parental rights and responsibilities or parent-child contact  
88 and it appears that deployment or mobilization of a parent who is a  
89 member of the armed forces is imminent, upon motion by either  
90 parent, the court shall expedite a hearing to establish temporary  
91 parental rights and responsibilities and parent-child contact to (1)  
92 ensure the deploying parent has access to the child, provided it is in  
93 the child's best interest; (2) ensure disclosure of information; (3) grant  
94 other rights and duties set forth herein; and (4) provide other  
95 appropriate relief. Any initial pleading filed to establish parental rights  
96 and responsibilities or parent-child contact with a child of a deploying  
97 parent shall be so identified at the time of filing by stating in the text of  
98 the pleading the specific facts related to deployment or mobilization.

99 Sec. 2. (NEW) (*Effective from passage*) (a) Nothing in section 1 of this  
100 act shall preclude the court from hearing a motion ninety days after  
101 the return of the deploying parent for permanent modification of final  
102 orders of custody and visitation issued pursuant to section 46b-56, 46b-  
103 56a or 46b-61 of the general statutes. The nondeploying parent shall  
104 bear the burden of showing that reentry of final orders of custody or  
105 visitation, issued pursuant to section 46b-56, 46b-56a or 46b-61 of the  
106 general statutes, in effect before the deployment or mobilization is no  
107 longer in the child's best interest.

108 (b) Nothing in this section and section 1 of this act shall impair the  
109 court's ability to hear an emergency motion to modify final orders of  
110 custody or visitation issued pursuant to section 46b-56, 46b-56a or 46b-  
111 61 of the general statutes and to grant an ex parte order on such  
112 motion prior to ninety days after the deployment or mobilization ends  
113 and upon the filing and service of a verified application for the same



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The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill makes changes to entering into or modifying a final order of custody or visitation and does not result in a fiscal impact.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis**

**sHB 5395**

***AN ACT CONCERNING CUSTODY ORDERS FOR DEPLOYED MEMBERS OF THE ARMED FORCES.***

**SUMMARY:**

This bill protects the child custody and visitation rights of a deploying or mobilizing armed services member under certain circumstances and with certain conditions.

It prohibits a court from entering a final custody or visitation order modifying a final custody or visitation order until 90 days after a deploying parent's deployment or mobilization ends, unless he or she agrees to a modification.

The bill also sets the requirements for temporary modification orders. If a temporary modification is agreed to, a transition plan detailing parental rights and responsibilities is required. When the transition plan is complete, the prior final order is again in effect.

The bill specifies that it does not stop the court from hearing a motion 90 days after a deploying parent returns for permanent modification of final orders of custody and visitation. The nondeploying parent bears the burden of showing that re-entry of final order of custody or visitation that was in effect before the deployment is no longer in the child's best interest.

EFFECTIVE DATE: Upon passage

**PROHIBITION ON FINAL ORDER MODIFICATION**

When a deploying parent is required to be separated from his or her child during a deployment or mobilization, the bill prohibits a court from entering a final order of custody or visitation modifying a final

order of custody or visitation until 90 days after the deployment or mobilization ends, unless the deploying parent agrees to the modification. It applies to final orders of custody or visitation related to custody, joint custody, or orders when parents live separately.

The bill defines a “deploying parent” as an armed forces member notified by military leadership that he or she will be deployed or mobilized with the armed forces. “Nondeploying parent” means a parent who has not been so notified.

It defines:

1. “deploy” as military service in compliance with military orders that an armed forces member receives to report for combat operations, contingency operations, peacekeeping operations, a remote tour of duty, or other active duty service, including a period during which the member remains subject to deployment orders and deployed on account of sickness, wounds, or other lawful cause;
2. “mobilize” as the call-up of National Guard or Reserve service members to extended active service, but, it does not include National Guard or Reserve annual training, inactive duty days, drill weekends, temporary duty or state active duty; and
3. “armed force” as the U.S. Army, Navy, Marine Corps, Coast Guard, Air Force, their reserve components, and the state’s National Guard under federal service.

### **TEMPORARY MODIFICATION ORDERS**

Under the bill, when an armed forces member receives notice of deployment or mobilization requiring separation from his or her child for whom he or she has sole or joint custody, the member or the nondeploying parent may ask the court to modify any existing custody or visitation order. And the court may enter a temporary order of custody or visitation modifying a final order of custody or visitation for the period of deployment or mobilization when certain conditions

are met.

First, the court must find that the deployment or mobilization would have a material effect upon the deploying parent's ability to exercise parental rights, responsibilities, or parent-child contact as set in the existing final orders of custody or visitation. Second, modification must be in the child's best interests.

The bill (1) specifies that when issuing temporary modification orders in this situation, existing custody and visitation law must guide the court, and (2) requires the court to hear motions for temporary modification due to deployment as quickly as possible and give them priority.

### ***Modification Requirements***

A temporary court order modifying final orders of custody or visitation must specify that deployment or mobilization is the basis for the order, and the court must enter it as a temporary order. The order must also require the nondeploying parent to provide the court and the deploying parent with 30 days' advance written notice of any change of address and telephone number, unless a court has ordered that the deploying party is not entitled to this information.

***Delegation of Rights.*** Under the bill, when a deploying parent makes the motion, and in accordance with the law concerning visiting rights for anyone, the court may delegate a parent's right of contact, or a portion, to (1) a family member; (2) a person with whom such parent lives; or (3) another person with a close and substantial relationship to the minor child or children for the duration of the deployment or mobilization, if it is in the child's best interests. The bill specifies, however, that the delegated contact does not create separate rights to parent-child contact for a person other than a parent.

### ***Transition Plan***

Under the bill, custody and visitation modification orders must include a specific transition plan to facilitate a return to the predeployment order over the shortest reasonable time period after the

deployment and, taking into consideration the child's best interest. Temporary modification orders issued under the bill must designate the parent's (1) parental rights; (2) responsibilities; and (3) parent-child contact during a period of leave granted to the deploying parent, in the best interests of the child.

The bill specifies that changes in actual leave dates cannot be used by the nondeploying parent to prevent parent-child contact.

A temporary court order modifying final orders of custody or visitation issued under the bill must require that the:

1. nondeploying parent make the child reasonably available to the deploying parent when the deploying parent has leave;
2. nondeploying parent facilitate opportunities for telephone, electronic mail, and other contact between the deploying parent and the child during deployment or mobilization; and
3. deploying parent provide timely information about his or her leave schedule to the nondeploying parent.

### **PENDING AND NONEXISTENT ORDERS**

If pendente lite orders of custody or visitation are in place (i.e., orders while litigation is pending) or if there are no existing orders of custody or visitation establishing the terms of parental rights and responsibilities or parent-child contact and it appears that deployment or mobilization is imminent, then on either parent's motion the court must expedite a hearing to establish temporary parental rights and responsibilities and parent-child contact. This is to (1) ensure the deploying parent has access to the child, provided it is in the child's best interest; (2) ensure disclosure of information; (3) grant other rights and duties; and (4) provide other appropriate relief.

Any initial pleading filed to establish parental rights and responsibilities or parent-child contact with a child of a deploying parent must be identified at the time of filing by stating in the text of

the pleading the specific facts related to deployment.

**POST-DEPLOYMENT OR -MOBILIZATION**

The bill specifies that it does not stop the court from hearing a motion 90 days after a deploying parent returns for permanent modification of final orders of custody and visitation. The nondeploying parent bears the burden of showing that reentry of final order of custody or visitation that was in effect before the deployment is no longer in the child’s best interest.

Additionally, the bill does not impair the court’s ability to hear an emergency motion to modify final orders of custody or visitation and to grant an ex parte order (from or for one party) on the motion before reaching the 90 day mandated period when a verified application is filed and served alleging an immediate danger of harm to the child. Any such motion must be heard as quickly as possible and must be heard within 15 days of filing.

**COMMITTEE ACTION**

Select Committee on Veterans' Affairs

Joint Favorable Substitute Change of Reference  
Yea 10 Nay 0 (03/13/2012)

Judiciary Committee

Joint Favorable  
Yea 45 Nay 0 (04/02/2012)