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**Testimony of Stephen N. Ment
Select Committee on
Veteran's Affairs Public Hearing
March 8, 2012**

**House Bill 5395, An Act Concerning Custody Orders for Deployed
Members of the Armed Forces**

Thank you for the opportunity to submit written testimony on behalf of the Judicial Branch in regards to **House Bill 5395, *An Act Concerning Custody Orders for Deployed Members of the Armed Forces***. While we recognize the major life disruption that can occur when a military parent is deployed and the desire to minimize the burden on the parent who is deploying, the Judicial Branch has a number of concerns, some procedural and some substantive, about this bill.

One of our substantive concerns is with the provision on lines 50-55 that the court, consistent with the best interests of a child, may give the deployed parent's time with the child to someone else in his family, a cohabitant or someone else with a "close and substantial relationship." Presumably this would be over the objection of the other parent. This standard is totally inconsistent with the standard for granting third party visitation or custody and is likely unconstitutional.

Another concern that is more procedural in nature is that the bill, in various places starting with lines 41-43, requires the court to expedite a hearing for deploying parents. The language is "as expeditiously as possible and shall be given priority for this purpose." This may become a serious resource issue, both from the perspective of having judges available to hear these cases and from the perspective of Family Services'

involvement. When a soldier is deployed, particularly on in the National Guard, he or she is likely one of many from a region, so there could be a number of motions from military personnel filed. We would respectfully request that the phrase, "shall be given priority" be deleted, and that the phrase "as expeditiously as possible" be changed to "as expeditiously as practicable."

Lines 44-46 provide that when the court enters temporary orders of custody or visitation that will be in effect during deployment, the court must also order "a specific transition schedule to facilitate a return to the pre-deployment order over the shortest reasonable time period after the deployment ends, taking into consideration the child's best interests." It is difficult for judges to enter future order since they do not know what the circumstances will be at the time the orders will go into effect. In recognition of this, we would suggest amending this language to require a plan that will presumptively be the order, unless it is not in the best interest of the child at that time. That will put something in place that requires the non-deployed parent take affirmative steps to prevent the order from going into place.

We would respectfully suggest that there needs to be an exception for domestic violence situations written into the address notification requirement in lines 75-77, such as adding, after "number", the phrase "...unless a court has ordered that the deploying party is not entitled to this information." Also, it may not always be possible to give 30 days notice, so we would suggest wording such as, "with thirty days' advance notice, or, within 72 hours of the change of address or telephone number, if thirty days notice is not possible."

The standard of best interest to the child should be inserted into subsection (f). We would suggest adding to line 84, "ensure the deploying parent has access to the child, provided it is in the child's best interest."

We have a substantive concern with lines 99-102 "The deployment and any resulting temporary disruption to the child shall not be considered in determining whether there has been a real, substantial and unanticipated change of circumstances in

regard to the motion to modify.” This section is inconsistent with long-established law, which focuses on the child’s best interest, not on the parent. Deployment may very well affect the child’s best interest and excluding it from consideration could be harmful to the child. The question is how is the child doing and will the child’s well-being, whether or not it results from the deployment, necessitate some change in the custody order.

In line 109, we would suggest that the word “irreparable” should be removed. It is inconsistent with any other emergencies. If a child is in danger of harm, whether or not it is permanent, the child should be protected.

Thank you for your consideration of our concerns. We would be pleased to continue discussing this proposal with the proponents of the bill.

