



Substitute House Bill No. 5395

Public Act No. 12-90

AN ACT CONCERNING CUSTODY ORDERS FOR DEPLOYED MEMBERS OF THE ARMED FORCES AND CONFIDENTIAL COMMUNICATIONS MADE TO MEMBERS OF THE ARMED FORCES WHO ARE VICTIM ADVOCATES OR SEXUAL ASSAULT PREVENTION COORDINATORS.

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

Section 1. (NEW) (*Effective July 1, 2012*) (a) For the purposes of this section:

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

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

(3) "Deploying parent" means a parent who is a member of the

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armed forces and has been notified by military leadership that he or she will deploy or mobilize with the armed forces;

(4) "Mobilize" means the call-up of National Guard or Reserve service members to extended active duty. "Mobilization" does not include National Guard or Reserve annual training, inactive duty days, drill weekends, temporary duty or state active duty; and

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

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

(c) If a parent is a member of the armed forces, has sole or joint custody of a child or court ordered visitation, parental access or parenting time and receives notice from military leadership that he or she will deploy or mobilize in the near future and will be required to be separated from such child due to such deployment or mobilization, then upon motion of such deploying parent or the nondeploying parent, a court may enter temporary orders of custody or visitation modifying final orders of custody or visitation during the period of such deployment or mobilization if: (1) The deployment or mobilization would have a material effect upon the deploying parent's ability to exercise parental rights and responsibilities or parent-child contact as set forth in the existing final orders of custody or visitation, and (2) the court finds that such modification is in the best interests of the child. In issuing such temporary modification orders, the court

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shall be guided by the provisions of the general statutes pertaining to custody and visitation. Motions for temporary modification of final orders of custody or visitation because of deployment or mobilization shall be given priority for this purpose.

(d) A temporary court order modifying final orders of custody or visitation issued under subsection (c) of this section shall require that: (1) Whenever the deploying parent is granted leave from such deployment or mobilization, the nondeploying parent shall make the child available to the deploying parent to the extent requested by the deploying parent, provided (A) such request for visitation time is not inconsistent with that provided for in the final orders of custody or visitation being modified by such temporary court order, and (B) the child shall not be absent from school unless ordered by the court or agreed to, in writing, by both parents; (2) the nondeploying parent facilitate opportunities for telephonic, electronic mail, and other such contact between the deploying parent and the child during deployment or mobilization; and (3) the deploying parent provide timely information regarding his or her leave schedule to the nondeploying parent. Changes in actual leave dates shall not be used by the nondeploying parent as a justification to limit contact between the deploying parent and the child.

(e) A temporary court order modifying final orders of custody or visitation issued under subsection (c) of this section shall specify that deployment or mobilization is the basis for the order and shall be entered by the court as a temporary order. The order shall further require the nondeploying parent to provide the court and the deploying parent with thirty days' advance written notice of any change of address and any change of telephone number, unless a court has ordered that the deploying party is not entitled to this information.

(f) If pendente lite orders of custody or visitation are in place or if there are no existing orders of custody or visitation establishing the

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terms of parental rights and responsibilities or parent-child contact and it appears that deployment or mobilization of a parent who is a member of the armed forces is imminent, upon motion by either parent, the court shall expedite a hearing to establish temporary parental rights and responsibilities and parent-child contact to (1) ensure the deploying parent has access to the child, provided such access is in the best interests of the child; (2) ensure disclosure of information; (3) grant other rights and duties set forth in this section; 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 shall be so identified at the time of filing by stating in the text of the pleading the specific facts related to deployment or mobilization.

(g) Nothing in this section shall preclude the court from hearing a motion at least ninety days after the return of the deploying parent for permanent modification of final orders of custody and visitation issued pursuant to section 46b-56, 46b-56a or 46b-61 of the general statutes. The nondeploying parent shall bear the burden of showing that reentry of final orders of custody or visitation, issued pursuant to section 46b-56, 46b-56a or 46b-61 of the general statutes, in effect before the deployment or mobilization is no longer in the best interests of the child. The absence of a deploying parent due to deployment or mobilization shall not be the sole basis for modifying such orders.

Sec. 2. Section 52-146k of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) As used in this section:

(1) "Battered women's center" means any office, shelter, host home or center offering assistance to battered women through crisis intervention, emergency shelter referral and medical and legal advocacy, and which meets the Department of Social Services criteria

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of service provision for such centers.

(2) "Battered women's counselor" means any person engaged in a battered women's center (A) who has undergone a minimum of twenty hours of training which shall include, but not be limited to, the dynamics of battering, crisis intervention, communication skills, working with diverse populations, an overview of the state criminal justice system and information about state and community resources for battered women, (B) who is certified as a counselor by the battered women's center which provided such training, (C) who is under the control of a direct service supervisor of a battered women's center, and (D) whose primary purpose is the rendering of advice, counsel and assistance to, and the advocacy of the cause of, battered women.

(3) "Confidential communication" means information transmitted between a victim of a battering or a sexual assault and a battered women's counselor or sexual assault counselor in the course of that relationship and in confidence by a means which, so far as the victim is aware, does not disclose the information to a third person other than any person who is present to further the interests of the victim in the consultation or any person to whom disclosure is reasonably necessary for the transmission of the information or for the accomplishment of the purposes for which such counselor is consulted, and includes all information received by, and any advice, report or working paper given or made by, such counselor in the course of the relationship with the victim.

(4) "Rape crisis center" means any office, institution or center offering assistance to victims of sexual assault and their families through crisis intervention, medical and legal advocacy and follow-up counseling and which meets the Department of Public Health criteria of service provision for such centers.

(5) "Sexual assault counselor" means (A) any person engaged in a

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rape crisis center who [(A)] (i) has undergone a minimum of twenty hours of training which shall include, but not be limited to, the dynamics of sexual assault and incest, crisis intervention, communication skills, working with diverse populations, an overview of the state criminal justice system, information about hospital and medical systems and information about state and community resources for sexual assault victims, [(B)] (ii) is certified as a counselor by the sexual assault center which has provided such training, [(C)] (iii) is under the control of a direct services supervisor of a rape crisis center, and [(D)] (iv) whose primary purpose is the rendering of advice, counseling and assistance to, and the advocacy of the cause of, victims of sexual assault, or (B) any member of the armed forces of the state or the United States who is trained and certified as a victim advocate or a sexual assault prevention coordinator in accordance with the military's sexual assault prevention and response program.

(6) "Victim" means any person who consults a battered women's counselor or a sexual assault counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by a battering or a sexual assault.

(b) On or after October 1, 1983, a battered women's counselor or a sexual assault counselor shall not disclose any confidential communications made to such counselor at any time by a victim in any civil or criminal case or proceeding or in any legislative or administrative proceeding unless the victim making the confidential communications waives the privilege, provided under no circumstances shall the location of the battered women's center or rape crisis center or the identity of the battered women's counselor or sexual assault counselor be disclosed in any civil or criminal proceeding. Any request made on or after October 1, 1983, by the defendant or the state for such confidential communications shall be subject to the provisions of this subsection.

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(c) When a victim is deceased or has been adjudged incompetent by a court of competent jurisdiction, the guardian of the victim or the executor or administrator of the estate of the victim may waive the privilege established by this section.

(d) A minor may knowingly waive the privilege established by this section. In any instance where the minor is, in the opinion of the court, incapable of knowingly waiving the privilege, the parent or guardian of the minor may waive the privilege on behalf of the minor, provided such parent or guardian is not the defendant and does not have a relationship with the defendant such that he has an interest in the outcome of the proceeding.

(e) The privilege established by this section shall not apply: (1) In matters of proof concerning chain of custody of evidence; (2) in matters of proof concerning the physical appearance of the victim at the time of the injury; or (3) where the battered women's counselor or sexual assault counselor has knowledge that the victim has given perjured testimony and the defendant or the state has made an offer of proof that perjury may have been committed.

(f) The failure of any party to testify as a witness pursuant to the provisions of this section shall not result in an inference unfavorable to the state's cause or to the cause of the defendant.