
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)